Supreme Court, U.S.
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NO.

In the

SUPREME COURT OF THE UNITED STATES

Spring Term, 1995

WILLIAM FONTANILLE

PETITIONER

VERSUS

STATE OF LOUISIANA

RESPONDENT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR THE PETITIONER

GAINSBURGH, BENJAMIN, FALLON & DAVID
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165 PP

QUESTION PRESENTED

1. Were petitioner's rights under the Fourteenth Amendment of the United States Constitution violated when the State withheld exculpatory "Brady" material in the criminal prosecution of this matter?

PARTIES

The parties to the proceedings below were the State of Louisiana as represented by the office of John Mamoulides, District Attorney for the Parish of Jefferson, State of Louisiana, and the petitioner William Fontanille.

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State of Louisiana v. William Fontanille, Louisiana Fifth Circuit Court of Appeal 1994, writ denied (unpublished).

State of Louisiana v. William Fontanille, 24th Judicial District Court, September 2, 1994, writ denied (unpublished).

JURISDICTIONAL STATEMENT

On February 9, 1995, the Louisiana Supreme Court denied petitioner's application for a writ of certiorari and/or review. This Honorable Court has jurisdiction to review the ruling of the Louisiana Supreme Court by virtue of United States Constitution, Article III, Section 2 [2].

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV which reads, in pertinent part, "nor shall any State deprive any person of life, liberty, or property, without due process of law."

In the

SUPREME COURT OF THE UNITED STATES

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WILLIAM FONTANILLE

PETITIONER

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STATE OF LOUISIANA

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR THE PETITIONER

STATEMENT OF THE CASE

William Fontanille was originally indicted on May 16, 1986 for First Degree Murder arising out of the death of Janet Myers on February 24, 1984. He was tried on this charge from October 26 through November 1, 1986. A mistrial was declared because the jury was unable to reach a verdict.

On May 4, 1987, the State amended its original indictment to add the charge of Second Degree Murder and proceeded to prosecute William Fontanille on that charge. While the original murder indictment was pending, on October 7, 1987, the State re-indicted William Fontanille and Kerry Myers (the State witness who testified against Fontanille in 1986) for Second Degree Murder, and conspiracy to commit Second Degree Murder.[1] Subsequently, Fontanille won the conspiracy to commit murder charge. Thereafter, after many prosecution delays and continuances the State finally brought William Fontanille and Kerry Myers to trial for Second Degree Murder in March 1990. On April 5, 1990 the jury convicted Fontanille of Manslaughter. Myers was convicted of Second Degree Murder. Fontanille subsequently, filed a Motion for New Trial which was denied.

William Fontanille was sentenced to 21 years at hard labor for his manslaughter conviction, and Kerry Myers was sentenced to life imprisonment for his murder conviction.

In October of 1993, William Fontanille filed a "Motion for Post-Conviction Relief," because he contended the State failed to provide him with exculpatory evidence - Brady material. It was only at this time did Fontanille discover and, consequently, raise the issue regarding the denial of his right to

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1 On October 7, 1987, in a three count indictment, the State indicted their former "star" witness against Fontanille, Kerry Myers for Second Degree Murder and for conspiracy to commit Second Degree Murder.

due process under the Fourteenth Amendment of the Louisiana Constitution and the Constitution of the United States, because the State had withheld exculpatory, favorable cross examination, impeachment evidence - Brady material.

On November 4, 1993, a hearing was conducted pursuant to this motion. On September 2, 1994, the trial court denied Fontanille's motion for post-conviction relief. The Louisiana Fifth Circuit Court of Appeal denied the writ of certiorari. On February 9, 1995, the Louisiana Supreme Court denied petitioner's application for a writ of certiorari and/or review. Petitioner calls upon this Honorable Court to review the findings of the courts below on the issue presented herein.

SUMMARY OF ARGUMENT

The Due Process Clause of the Fourteenth Amendment of the United States Constitution affords all criminal defendants due process under the law. In the matter of State of Louisiana v. William Fontanille, the State of Louisiana, in its prosecution of this case, denied petitioner his right to a fair trial by denying him due process in the withholding of exculpatory "Brady" material from petitioner. According to well established law, a petitioner must merely establish that the prosecution withheld the exculpatory "Brady" evidence in order to be entitled to relief. In the seminal case of Brady v. Maryland, this Honorable Court held that if relator can establish that the prosecution withheld requested, material exculpatory evidence, then relator would be entitled to relief.

In petitioner William Fontanille's case, the courts below have acknowledged that "Brady" material was withheld from petitioner, yet he was denied the relief to which he is entitled pursuant to Brady v. Maryland (See Attached Order, Appendix I-A).

Due to this clear violation of petitioner's Constitutional right to due process under the law, petitioner submits to this Honorable Court that post-conviction relief should be awarded and a new trial granted.

ARGUMENT

While prosecuting William Fontanille, the State of Louisiana failed to divulge exculpatory evidence which was material to Fontanille's defense. The State failed to advise Fontanille that his written statement made to a Jefferson Parish Detective Robert Masson, on February 25, 1984 at 2:50 a.m. was shown by Masson to Kerry Myers before Myers gave his own statement on March 14, 1984 at 1:55 p.m.

Also, the State failed to disclose or report on the existence of conversations that took place between Masson and Myers that were not contained in the context of Myers' written statement. The above information was not contained in the Sheriffs' Office Incident Report and it was not provided in pre-trial discovery filed by Fontanille.

The information that was withheld from Fontanille is similar to the statement Brady did not receive. That is, both were the types of favorable, exculpatory evidence which must be given to the defendant, as mandated by the **Brady** court.

A portion of the Myers/Masson statement was not recorded by Masson, and the contents of their post or pre-statement discussion was not mentioned in Masson's police report.

Consequently, the jury **never** knew about the unreported discussion between Masson and Myers, and they were not given an explanation of why Myers' statement was so similar to Fontanille's statement. Their state-

ments were so similar that they both were indicted for conspiracy; the prosecution thought they conjured and fabricated similar contents of the two statements to confuse and mislead the detectives. Also, the jury **never** learned that Myers had the opportunity to read Fontanille's statement before making his own, because the plaintiff had no knowledge of this occurrence. Had the jury known of this, Fontanille would have been able to explain why Myers' statement was so strikingly similar to Fontanille's statement. The similarities of the statements, unexplained to the jury, was very detrimental to Fontanille's defense. (See Attached Fontanille statement, Appendix III, and Myers statement, Appendix IV)

According to the Louisiana Code of Criminal Procedure, in proceedings pursuant to an application for post conviction relief, the petitioner shall have the burden of proving that relief is warranted. La. Code of Criminal Procedure Article 930.2. The burden of proving is not a heavy one. In fact, **petitioner must merely establish that the prosecution withheld the exculpatory, "Brady" evidence** to be entitled to post conviction relief. **State v. Felton**, 522 So.2d 626 (La. App. 4 Cir. 1988).

In **Felton**, the Louisiana Fourth Circuit Court of Appeal cited the seminal case of **Brady v. Maryland**[2] and stated:

> **If relator can establish that the prosecution withheld requested, material exculpatory evidence then he would be entitled to (post conviction) relief.**

2 373 U.S. 83, 10 L.Ed. 2d 215, 83 S.Ct. 1194; in this case, the Supreme Court held that suppression of evidence by the State in a criminal prosecution is in violation of the Due Process clause of the Fourteenth Amendment.

Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963).

State v. Felton, 522 So.2d 626, 627 (La. App. 4 Cir. 1988).

The facts of **Brady v. Maryland** are astoundingly similar to the case at bar. In **Brady**, petitioner (Brady) and his co-defendant were found guilty of first degree murder. Prior to trial, Brady's defense counsel had requested that the prosecution allow him to examine the extra judicial statements made by his co-defendant. Several of those statements were shown to the defense but one, only one, of the statements ***"was withheld by the prosecution*** and did not come to petitioner's notice until after he had been tried, convicted, and sentenced, and after the conviction had been affirmed." (Emphasis added.) **Brady v. Maryland**, 373 U.S. at 84.

The **Brady** Court determined that the evidence withheld by the prosecution was "material" to Brady's defense; consequently, the Court held that the withholding of "Brady" evidence is a violation of the Due Process Clause of the Fourteenth Amendment. **Brady**, 373 U.S. at 87. Accordingly, in **Brady** the Court granted petitioner a new trial. **Id**. The Court stated:

> **We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.**

Brady v. Maryland, 373 U.S. 83, 87 (1963).

In determining whether a new trial is warranted in this case, this Hon-

orable Court should ***not*** act for the jury by weighing the probable impact the "Brady" evidence may have had on the jury. In this regard, the Brady Court declared:

> **There is considerable doubt as to how much good Boblit's undisclosed confession would have done Brady if it had been before the jury.**

Id. at 88. Notwithstanding the "considerable doubt" expressed by the United States Supreme Court in **Brady**, the majority nonetheless declared:

> **We cannot put ourselves in the place of the jury and assume what their views would have been as to whether it did or did not matter whether it was Brady's hands or Boblit's (co-defendant's) hands that twisted the shirt about the victims's neck ... [I]t would be 'too dogmatic' for us to say that the jury would not have attached any significance to this evidence ... (Emphasis added.)**

Brady v. Maryland, 373 U.S. 83, 88 (1963).

This pronouncement is consistent with the Law of the State of Louisiana that mandates jurors are "The Judges of the Facts." The ***jury alone decides*** what facts have been proved and what facts have not been proved. (Emphasis added) Furthermore, as the Supreme Court stated in its landmark decision,

> **[s]ociety wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly.**

Brady v. Maryland, 373 U.S. 83, 87 (1963).

These facts were unknown to Fontanille in his 1986 trial for First Degree Murder when Myers was a State's witness, and, also, were unknown to him in the 1990 trial when Myers was a co-defendant. These facts came to light in October of 1993; only after Joseph Bosco wrote a book entitled "Blood Will Tell," that chronicled the events leading up to and after the murder. During his preparation for the book, Bosco interviewed Kerry Myers who disclosed to Bosco that he was shown a copy of Fontanille's statement before giving his own statement. Myers statement was an almost exact reproduction of Fontanille's statement. The similarities of the two statements were a monumental impediment to Fontanille's defense.

As part of the post conviction hearing evidence, the State **stipulated** that if Joseph Bosco were called to testify he would testify that, **"KERRY MYERS WAS PROVIDED A COPY OF WILLIAM FONTANILLE'S STATEMENT BEFORE GIVING HIS OWN STATEMENT."**

During the post conviction hearing Kerry Myers stated that he was shown a specific part of the Fontanille statement the day he made his taped statement,

> "... I believe I was shown a specific part of it
> the day I made the taped statement."
> (Appendix II-A, p. 17)

Myers went on further to answer:

> **Q:** Do you recall if you ever told anyone since this date, March 14, 1984, that you saw this statement?
>
> **A:** I spoke about that I had seen a part, or was spoken to about a part of that statement.
>
> **Q:** Who did you tell that to?
>
> **A:** I told that to Mr. Joe Bosco.
>
> **Q:** What specifically did you tell him?
>
> **A:** That, I really don't remember. He asked me had I ever seen a part of it, and I said, I told him that I can't remember specifically when, but I was either informed of it, or pointed out a specific part of it. (Appendix II-A, p. 18, 19)

None of these facts revealed by Kerry Myers appeared in the Jefferson Parish Sheriff's Office report, and, thus, the defendant did not have the opportunity to question Kerry Myers nor detective Robert Masson about this activity prior to the first trial.

Reviewing the Detective, Robert Masson's, testimony, it is evident that his policy regarding statements is defective.

> **Q:** The colloquy you have after people give statements when you confront them with facts that are different than their statement, how come you don't keep that on tape?
>
> **A:** Because that statement is completed. If they want to make any change in their statement based on the information that I brought up to them, I would take a supplementary statement, a complete

statement from him. (Appendix II-A, p. 24, 25)

Further amplifying the fact that the entire statement given by Myers is not contained in the Myers transcript, Masson further states:

> **Q:** So, what you're telling us is that it's entirely possible that the statements of Fontanille 1 and Fontanille 2, which is the statement of Bill Fontanille and Kerry Myers, respectively, may not be the entire contents of the conversation you had with them?
>
> **A:** **IT'S DEFINITELY NOT THE CONTENTS OF THE ENTIRE CONVERSATION,** because I speak to them before I start the statement. (Emphasis added)
>
> **Q:** And you speak to them after you --
>
> **A:** I speak to them after, also, yes sir.
>
> (Appendix II-A, p. 26)

The Jefferson Parish Sheriff's Office report did not indicate that the Myers transcript provided to the defendant was not the entire conversation with Masson, and, the report did not indicate there were additional questions and responses that were not taped. Thus, the defendant was unable to conduct a Constitutionally effective cross-examination of Kerry Myers and Robert Masson before the jury.

Accordingly, because Fontanille was unaware Myers had the opportunity to review Fontanille's statement before giving his own, **FONTANILLE'S RIGHT TO CROSS-EXAMINE MYERS AND MASSON ABOUT THE SIMILARITIES BETWEEN THE TWO**

STATEMENTS WAS IMPOSSIBLE.

(See statements of William Fontanille and Kerry Myers, Appendix III & IV)

This Honorable Court recently granted a new trial to a petitioner who had been denied a fair trial when the State withheld Brady material from him. Kyles v. Whitley, No. 93-7927, WL 227644, (April 19, 1995). In Kyles, this Honorable Court recognized aspects of materiality for Brady purposes which warrant serious consideration in determining whether a criminal defendant's constitutional right to due process has been violated. Kyles v. Whitley, supra. First, suppression of evidence by the government must create a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. Second, a Brady violation has occurred when favorable evidence could reasonably be taken to put the whole case in a different light. Thirdly, once a reviewing court has found constitutional error, there is no need for further harmless error review. And, fourth, the State's disclosure obligation turns on the cumulative effect of all suppressed evidence favorable to the defense. Kyles v. Whitley, supra.

In Kyles, this Court determined that the net effect of the state-suppressed evidence favoring the petitioner raised a reasonably probability that its disclosure would have produced a different result at trial. Accordingly, petitioner's conviction was reversed and he was granted a new trial. Similarly,

in the matter now before this Honorable Court, petitioner submits the record is clear that Brady material was withheld by the State and that, pursuant to the law pronounced by this Court in Kyles v. Whitley, petitioner, William Fontanille is entitled to a new trial.

CONCLUSION

A significant issue of law must be resolved by this Honorable Court. There are no facts in dispute. In fact, the State stipulated to important undisputed testimony. William Fontanille was deprived of his right to effectively cross-examine the most important and only witness accusing him, because requested "Brady" type favorable evidence was not made available to him. Accordingly, he was deprived of a fair trial as guaranteed by the Constitution of the State of Louisiana and the Constitution of the United States; the jurisprudence interpreting same require that this Court grant petitioner's request for a new trial. **Brady v.Maryland**, 373 U.S. 83 (1963); **State v. Felton**, 522 So.2d 626 (La.App. 4 Cir. 1988); **Kyles v. Whitley**, No. 93-7927, WL 227644 (April 19, 1995).

Respectfully submitted,
GAINSBURGH, BENJAMIN, FALLON & DAVID

By _____

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APPENDIX

State of Louisiana

v.

William Fontanille

No. 87-3280

Twenty-Fourth Judicial District Court

Denied September 2, 1994

Petitioner, William Fontanille (Fontanille), was convicted of manslaughter for the death of Janet Myers (Janet). Fontanille's co-defendant, Kerry Myers (Myers), was convicted of second degree murder for Janet's death. Fontanille filed a Motion for Post Conviction Relief alleging that, before Myers gave his statement to Robert Mason (Mason), the Jefferson Parish Sheriff's detective investigating Janet's death, Mason gave Myers a copy of Fontanille's statement. According to Fontanille, this information surfaced for the first time during an interview between Myers and Joseph Bosco, an author of a book about the Fontanille/Myers trial. If the facts alleged are true, Fontanille claims that they would have explained to the jury the similarity between Fontanille and Myers' statements and would entitle him to a new trial under the holding of Brady vs. Maryland.

An evidentiary hearing was held. Myers was called to testify. He stated that he may have been given part of Fontanille's statement at some point but, he could not remember when.

APPENDIX I-A

Mason Testified that he did not give Myers a copy of Fontanille's statement before Mason took Myers' statement.

Bosco refused to testify about any statement that Myers might have made to him. But, both the State and Fontanille's attorney stipulated that if Bosco testified, he would have said that Myers told him that Myers was given a copy of Fontanille's statement before giving his own statement about Janet's death to Mason.

The Court finds that the evidence presented at the hearing was not convincing that, as a matter of fact, Myers was given a copy of Fontanille's statement before Myers gave his own statement to Mason. It is therefore not necessary to decide whether such facts would support petitioner claim for relief; ACCORDINGLY,

IT IS ORDERED that petitioner's, William Fontanille, Motion for Post Conviction Relief is denied.

Gretna, Louisiana, this 2nd day of September, 1994.

State of Louisiana

v.

William Fontanille

No. 94-KH-870

Court of Appeal of Louisiana, Fifth Circuit

October 19, 1994

Writ Denied December 2, 1994

IN RE: William Fontanille, applying for Writs of Certiorari, Prohibition, Mandamus or Review directed to the Honorable E.V. Richards, Judge, Division "B", Twenty-Fourth Judicial District Court for the Parish of Jefferson, State of Louisiana, Number 87-3280.

Writ denied.

APPENDIX I-B

State of Louisiana

v.

William Fontanille

No. 94-KK-3130

Supreme Court of Louisiana

February 9, 1995

In re: Fontanille, William; - Defendant(s); Applying for Writ of Certiorari and/or Review, Supervisory and/or Remedial Writs; Parish of Jefferson 24th Judicial District Court Div. "B", No. 87-3280; Court of Appeal, Fifth Circuit, No. 94-KH-870.

Denied.

Calogero, C. J. not on panel; recused.

APPENDIX I-C

TWENTY-FOURTH JUDICIAL DISTRICT COURT PARISH OF JEFFERSON STATE OF LOUISIANA

NO. 87-3280 DIVISION "B"

STATE OF LOUISIANA

VERSUS

KERRY MYERS AND WILLIAM FONTANILLE

Transcript of proceedings and testimony taken in the above numbered and entitled cause on Thursday, November 4, 1993, before the Honorable Ernest V. Richards, IV., Judge presiding.

APPEARANCES:

Terry Boudreaux, Esq., and
W. J. LeBlanc, Jr., Esq.
Assistant District Attorneys

Nick F. Noriea, Jr., Esq.
Attorney representing the defendant,
William Fontanille

Sidney Cotlar, Esq., and
Leonard Davis, Esq.
Attorneys representing
Joseph Bosco

REPORTED BY: MARTHA DULEY, C.C.R.

APPENDIX II-A

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PROCEEDINGS

THE COURT:

All right, Mr. Boudreaux and Mr. Le Blanc.

MR. LeBLANC:

Your Honor, number 31, 87-3280, State of Louisiana versus William Fontanille.

W. J. LeBlanc and Terry Boudreaux from the D.A.'s Office.

MR. NORIEA:

Nick Noriea representing Bill Fontanille.

(THE FOLLOWING IS A BENCH CONFERENCE)

MR. NORIEA:

Judge, is there anyway that they can, the State Trooper, -- see if they can take his handcuffs off, if it's all right with you?

THE COURT:

It's all right. I don't care.

(END OF CONFERENCE)

THE COURT:

Do you have any problems, security problems with taking his handcuffs off?

(THE DEPUTY SHAKES HIS HEAD IN THE NEGATIVE)

THE COURT:

Okay. You can take them off. Do you want him to sit with you Mr. Noriea?

MR. NORIEA:

Yes, sir.

THE COURT:

All right. All right, Mr. Noriea, we're here on your motion, so I think it's appropriate if you start.

MR. NORIEA:

Yes, Your Honor, we filed a motion for a new trial, and in connection with that we requested a hearing that the Court granted today.

We would like to call Kerry Myers as a witness.

THE COURT:

Well, before you do, the State has filed pleadings in the nature of an exception, I think, to your right to proceed with the motion for a new trial at this stage. So, I think it's appropriate if we take the State's motion up first.

MR. NORIEA:

Yes sir.

MR. BOUDREAUX:

That's correct, Your Honor, Terry Boudreaux for the State.

Your Honor, we had previously filed with the Court and forwarded a copy to Mr. Noriea, a memorandum in opposition to his motion, purely on a matter of procedure, based on the Louisiana Code of criminal Procedure, specifically Article 853.

Mr. Noriea has filed a pleading styled a motion for a new trial. Under the law, such a pleadings must be filed and disposed of prior to sentence. Sentence in this case was imposed several years ago, at least.

There's one exception which Mr. Noriea seeks to avail himself of with a supplemental motion, which I received this morning, which gives, on a certain ground, one year after the verdict is imposed, rather than prior to the verdict. However, we're still over one year from that time period. so regardless of which subsection Mr.

Noriea is seeking to come in under, it's the State's position that the time to file the motion for a new trial is past. And based on what I consider to be the mandatory language of that statute as set forth in the cases I cite in brief, the Court, I don't want to say lacks the jurisdiction, but I think at this point doesn't have the authority to entertain this motion for a new trial.

That's, quite briefly, Your Honor, the substance of our position. It's based purely on that code article.

THE COURT:

Mr. Noriea.

MR. NORIEA:

Your Honor, the Court has a lot of discretion in determining whether or not a defendant can proceed with a motion for a new trial.

It's somewhat ludicrous, to the point of unconstitutional -- the point that it's unconstitutional to require a defendant to find an error or defect in the proceedings before he's sentenced.

As you well know, this only recently came to light, and I signed an affidavit to that effect.

We ask that the Court would take this as a motion for a new trial, alternatively the courts have held that under your writ jurisdiction, your post conviction procedure, you can entertain this motion for a new trial under that jurisdiction that this court has.

THE COURT:

Well, there's some procedural problems with that too Mr. Noriea.

Quite frankly, I have not seen your supplemental memoran dum that you filed this morning. In fact, I did not see your memoran dum that I understand you filed Tuesday morning.

I presume it's the position of the State, is it, they don't deny that you have the right to request relief based on the facts that you've alleged in your petition. Their suggestion is that you should bring that in the form of post conviction relief, a petition for post conviction relief, as opposed to the motion for a new trial.

Quite frankly, I'm strongly convinced that that is the law. But I have not seen your memorandum, I want to see that. I understand that you make the argument that that's discretionary with the Court.

MR. NORIEA:

Yes, it is, Your Honor.

THE COURT:

I want to review the authorities that you've cited in that, so I'm going to take the matter of whether or not the procedural vehicle that you've chosen, under advisement until I've had a chance to review that.

The witnesses, however, are here in Court. I understand the

nature of the testimony will be short, and it is my proposal that we go forward with the evidentiary part of the hearing prior to a ruling on the legality of the procedural vehicle.

So, I'm going to go ahead and do that, take your motion under advisement Mr. Boudreaux.

So, now you can call your first witness.

MR. NORIEA:

I call Kerry Myers.

KERRY MYERS as called as a witness, and after having first been duly sworn testified on his oath as follows:

DIRECT EXAMINATION

BY MR. NORIEA:

Q. Mr. Myers, did you give a statement to Detective Robert Masson in March of 1984 concerning your knowledge of the death of Janet Myers?

A. Yes, I did.

Q. Prior to your giving that statement, did Detective Robert Masson, or anyone else give you the statement of William Fontanille that he had given to the Sheriff's office in Jefferson Parish?

A. No, they didn't.

Q. Had Detective Masson or anyone else provided you with the contents of Fontanille's statement prior to your making the statement to Masson?

A. Provided me --

MR. BOUDREAUX:

Judge, we're going to object to that question.

THE COURT:

On what ground?

MR. BOUDREAUX:

It's speculation, he's asking if he had been provided, would he have done such and such.

MR. NORIEA:

No, I'm asking--

THE COURT:

Well then, I misunderstood the question.

BY MR. NORIEA:

Q. Had you been provided any information regarding the contents of Fontanille's statement before you gave your statement to

Detective Masson?

A. The day I went to give that statement, they brought out specific points to me. One in particular, that they felt they had caught Billy Fontanille in a lie. They just wanted me to know that.

But, I do not remember exactly if it was before or after I gave the statement.

Q. But it's your testimony that you had not been provided Fontanille's written statement that he gave three weeks before?

A. I was not.

Q. Now, Jack Rau was at that interview, was he not?

A. Yes, I believe he was, yes.

Q. And is it not a fact that Mr. Rau is dead today, he passed away?

A . Yes, he is.

Q. Besides you and Mr. Rau, was there anyone else, at the time you gave your statement, besides Detective Masson, present?

A. I don't remember.

MR. NORIEA:

Your Honor, I have no further questions.

CROSS EXAMINATION

BY MR. LeBLANC:

Q. Mr. Myers, the night that your wife was killed, you were taken to

West Jefferson Hospital, is that correct?

A. Correct.

Q. And it was at that time that you were interviewed by a detective, Martin Childs, is that also correct?

A. Yes, that's correct.

Q. Did you relate to him the events of the prior evening as you best recalled them at that time?

A. Yes I did.

Q. Did you subsequently, on I believe March the 14th, give a statement to Detective Masson, is that correct?

A. The taped statement?

Q. The taped statement.

A. I believe that you're probably correct on the date, it was about that time.

Q. And the sum and substance of the statement given to Detective Masson was substantially the same as what you had originally told Detective Childs?

A. Yes, it was. There was also a statement in between given, about five days later, five days after my wife's death, the day I got home from the hospital.

Q. And who did you give that statement to?

A. I believe I gave it to Detective Masson, and Detective Childs in my father's home.

Q. All those statements were made without the benefit of any look or

knowledge of any statement that Bill Fontanille had given?

A. That is correct.

Q. And you have never deviated from those statements, in fact, to this day. Is that correct?

A. No.

MR. LeBLANC:

That's all I have, Judge.

MR. NORIEA:

I'm confused.

REDIRECT EXAMINATION

BY MR. NORIEA:

Q. How many recorded statements did you give any members of the Jefferson Parish sheriff's Office?

A. One, that I know of, one that I can remember.

Q. And which one was that, the first one the second one, or the third one?

A. It was the one in March.

Q. But prior to that you gave two other statements to the Jefferson Parish Sheriff's office?

A. One at the hospital, and one about five days later, the day I came home from the hospital.

Q. And it was before the last statement that Detective Masson told you about the specific point you mentioned, that Fontanille made to them?

A. Yes, it was the day I went down to the Sheriff's Department.

Q. How about before the first statement or the second statement, did anybody provide you with any information that was contained in Fontanille's statement?

A. No.

Q. And before you gave your recorded statement, you didn't see any writings of Fontanille's statement, is that your testimony?

A. That's correct.

Q. You're absolutely certain of that?

A. Yes I am.

Q. Have you ever told anyone since that date that you had been provided a copy of Fontanille's statement?

A. No, I've never said I've been provided a copy of his statement.

Q. What did you say about knowledge of Fontanille's statement to anyone else?

A. I was -- I made the statement that I was informed of, and I believe I was shown a specific part of it the day I made the taped statement.

Q. This was before you made the statement?

A. I don't remember if it was before or after.

Q. Well, what part of the statement were you shown?

A. To the best of my recollection, they were trying to make a point about the particular time that he claimed to have been seen in the area of my house.

MR. NORIEA:

Your Honor, I'd like to mark Fontanille's statement, Fontanille 1, and show it to the witness.

THE COURT:

All right, sir.

BY MR. NORIEA:

Q. I'll just page through this statement with you. The pages are numbered at the top. Page one, do you recall if you saw this that day that you made the statement, page one?

A. Do I recall if I saw page one? No, I don't have any specific memory of that, it's been ten years.

Q. Well, page two has a time on it, 1:00 p.m., do you recall -- you said something about you saw a time on it, they were asking you about the time. Do you recall if --

A. No sir, I don't have any specific knowledge of, or specific memory of exactly what page I saw.

Q. Let me show you this. This is page 4, it's got a long, page 4 and page 5, narrative by Fontanille. Do you recall seeing that before

you made your statement?

A. No sir, I don't have any specific memory of exactly what page I was shown.

Q. Do you recall if you ever told anyone since this date, March 14th, 1984 that you saw this statement?

A. I spoke about that I had seen a part, or was spoken to about a part of that statement .

Q. Who did you tell that to?

A. I told that to Mr. Joe Bosco.

Q. What specifically did you tell him?

A. That, I really don't remember. He asked me had I ever seen a part of it, and I said, I told him that I can't remember specifically when, but I was either informed of it, or pointed out a specific part of it.

Q. In other words, Detective Masson either informed you of the contents of part of Fontanille's statement, or showed you part of Fontanille's statement before you made your final recorded statement?

A. I'm not going to say that. I don't know if it was before or after. I do not remember, it was the day I was there.

Q. Okay.

MR. NORIEA:

I have no further questions.

THE COURT:

All right. Do you have any other witnesses Mr. Noriea.

MR. NORIEA:

We'd call Detective Masson, Your Honor, Robert Masson.

ROBERT MASSON, 4424 Wilson Drive Metairie, Louisiana, was called as a witness, and after having first been duly sworn, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. NORIEA:

Q. Mr. Masson, how were you employed in February and March of 1984?

A. I was a Sergeant with the Jefferson Parish Sheriff's Office.

Q. In connection with that job, did you have the occasion to investigate the murder death of Janet Myers?

A. Yes sir, I did.

Q. In connection with your investigation, did you take a statement from William Fontanille?

A. Yes, I did.

Q. Let me show you what I've previously marked for identification, Fontanille number 1, and tell me if you recognize it?

(THE WITNESS IS LOOKING AT THE STATEMENT)

A. It appears to be the statement I took of Kerry Myers -- from Bill

Fontanille.

Q. Okay, let me show you --

A. I didn't read every word of it, but --

Q. -- Fontanille 2, the statement of Kerry Myers. Tell me, do you recognize Fontanille 2 as being a copy -- as being the statement given to you by Kerry Myers?

(THE WITNESS IS LOOKING AT THE STATEMENT)

A. It's the statement I took from Kerry Myers, with Mr. Rau present.

Q. Of course Mr. Rau is dead today, is he not, he's passed away since this was taken?

A. I believe so, yes sir.

Q. All right, in connection with this investigation, you also prepared a police report, is that not correct?

A. Yes sir.

Q. And it contained in the body of that police report, it was essentially the information that Fontanille and Myers had given you concerning the events of this night, is that correct?

A. Yes.

Q. And incorporated, by reference, in the police report were these two statements that you just reviewed , Fontanille 1 and 2, is that correct?

A Yes sir.

Q. Now, how many times did you talk to Kerry Myers about the events of that night, before this statement of March 14th, 1984?

A. I believe there were two occasions.

Q. Did he ever give you a statement of the events that took place on those two -- in addition to this March 14th date?

A. No sir, not to me.

Q. Okay.

A. I spoke to him twice before that.

Q. All right. On the two previous speakings you had with Kerry Myers, at any time did you give him any portion of the Fontanille statement?

A. No, sir.

Q. Did you tell him what Fontanille had said in his statement?

A. Prior to the taped statement?

Q. Yes, sir?

A. No, sir.

Q. The day of the taped statement , did you tell Kerry Myers anything that Fontanille had said in his statement; or show him a portion of Fontanille's statement?

A. I don't recall showing him anything. If anything was said to him, it would have been after his statement.

Q. What did you tell him after the statement?

A. If, and I'm saying if, if anything was said, it would have been after the statement was taken.

The normal procedure would be to take the statement, and then if there are any discrepancies we wanted to clear up, because

you have another witness; after you have the statement from the first one you interviewed, then you may go back, for example, and say, Mr. Fontanille may have said this in his statement; how would you respond to that?

Q. Well, wait a minute, wait a minute. This isn't on the statement?

A. No sir, this would have been after the statement was completed.

Q. What, you ran out of tape?

A. No, sir.

Q. Why didn't you put it on tape?

A. Again --

MR. BOUDREAUX:

Objection, Your Honor, he didn't characterize that as what happened. He was referring to the normal procedure of what might have happened if a given circumstance occurred.

MR. NORIEA:

And I want to know why isn't it on tape, Judge.

MR. BOUDREAUX:

Because he just said he didn't do it, Judge.

MR. NORIEA:

I don't know so much about that.

THE COURT:

Well, rephrase your question, counsel.

BY MR. NORIEA:

Q. The colloquy you have after people give statements, when you confront them with facts that are different than their state ment, how come you don't keep that on tape?

A. Because that statement is completed. If they want to make any change in their statement based on the information that I brought up to them, I would take a supplementary statement, a complete statement from him.

In other words, I may ask him a question, and then if he has no response to it, or doesn't want to change anything in his statement, there's no reason to add anything to the statement.

And I'm not saying, I don't want you to put words in my mouth, I'm not saying that I said anything to him.

I'm saying that the normal procedure is, that that would be done. And, Mr. Rau was there, you know, his attorney was there.

Q. How about with Fontanille, when you took the statement from Fontanille, did you do the same with him?

A. Yes, sir. I'm not saying, again I'm not saying that I did ask him any specific questions, but the normal procedure -- because I did have some information from Kerry Myers already.

Q. So, what you're telling us is that it's entirely possible that the state

ments of Fontanille 1 and Fontanille 2, which is the statement of Bill Fontanille and Kerry Myers, respectively, may not be the entire contents of the conversation you had with them?

A. It's definitely not the contents of the entire conversation, because I speak to them before I start the statement.

Q. And you speak to them after you --

A. I speak to them after, also, yes sir.

Q. Especially if something in that witness' statement differs from another witness' statement; is that correct?

A. If it seems -- if, again, they want to change something in their state ment, I would take a supplementary statement. I've taken as many as three or four statements from a suspect or from a witness.

Q. But --

A. But in this particular case I didn't feel that this particular case warranted that.

Q. Do you recall any discrepancies that you discussed with Kerry Myers concerning a difference in what Fontanille said and what he said?

A. No sir, I really don't remember doing that with him. In fact, I remember Mr. Rau at the end, asking if he could ask a question. And at that point, I believe the interview concluded. I personally don't remember asking him any questions after Mr. Rau asked his questions. When that statement was completed,

when I completed my statement, Mr. Rau asked if he may, if he could ask --

Q. Let me show you the statement, he did ask some question. And you recall that?

A. Yes sir, I remember Mr. Rau asking if hecould ask some questions. And at that time I put those on tape because the tape was already running when he asked if he could ask some question. And, I do not recall asking any further questions of Kerry Myers after that.

Q. Well, what about Kerry Myers indicating that he had received information from you about what Fontanille had said?

A. I don't recall saying that to him.

Q. And these are the only two statements that you took of Myers and Fontanille?

A. Those are the only two taped statements I took from them, yes sir.

Q. The oral statements are contained in the body of your police report?

A. Yes sir, they are.

Q. And further it's that your testimony, that the oral statements are handled in the same or similar fashion as you handle these taped statement?

A. Well, I didn't take the first oral statement from Mr. Myers.

Q. You took the second oral statement from him?

A. I spoke to him briefly at his house. I believe he was getting ready to leave his house at that time to go visit hisson in the hospital,

and that's why I put off the interview, because I knew his son was injured also. And I believe, if I recall right, he was leaving the house to go visit his son.

MR. NORIEA:

I have no further witnesses, Your Honor -- questions, Your Honor.

THE COURT:

Cross examine?

MR. LeBLANC:

One moment, Judge.

Just a couple things, Judge.

CROSS EXAMINATION

BY MR. LEBLANC:

Q. Detective Masson, just so I understand correctly, you had talked about what you would normally do. For the purposes of this hearing, I'd like you to testify, to your best recollection, as to what actually happened in this case.

What is your recollection, sir, as to whether you provided Mr. Myers with any information, either written or oral, that may have been obtained from Mr. Fontanille's statement, prior to the March 14th taped statement of Mr. Myers?

A. I do not recall giving him any information relative to Mr. Fontanille's statement prior to the time he gave his statement.

MR. LEBLANC:

That's all I have, Judge.

THE COURT:

Redirect?

REDIRECT EXAMINATION

BY MR. NORIEA:

Q. Let me just ask you a question; would that information that you just gave us be contained in your police report; if you had given Myers' information about Fontanille's statement; would you have put that in your police report?

A. I doubt it seriously.

MR. NORIEA:

I have no further questions.

THE COURT:

Thank you, sir.

MR. NORIEA:

Your Honor, I would call Joseph Bosco.

MR. COTLAR:

If Your Honor please, Sidney Cotlar representing Joseph Bosco.

Mr. Bosco is present. He is present this morning by virtue of a subpoena served upon him by Mr. Noriea. That subpoena was received yesterday morning, although we had prior knowledge that it was coming.

This morning we filed, on behalf of Mr. Bosco, an objection to his subpoena and subpoena duces tecum and motion to quash, the original of which I believe you now have in front of you.

It's my appreciation of the law, Judge, that -- well, the basis of our objection is Louisiana Revised Statute 14:, Section 1451, et seq . , specifically Section, 1459, as well as the Louisiana State Constitution, Article 1, Section 7, and the First Amendment of the United States Constitution.

Mr. Bosco is a journalist; an investigative author; a reporter, and I believe the Court needs to have a hearing on our objection before Mr. Bosco should be ordered to testify.

THE COURT:

All right, we'll take that hearing up now.

Have you seen the memorandum Mr. Noriea?

MR. NORIEA:

Yes, Your Honor, I've seen the memorandum. I'd like to prepare a written memorandum, unless I can convince you now.

But, 1451 doesn't apply --

THE COURT:

Well, I don't know how we're going to handle that.

MR. NORIEA:

-- doesn't apply to a book writer.

1451 specifically excludes book writers. It includes a newspaper, other periodicals issued at relevant intervals and having a paid general circulation; certainly that's not one book. This isn't a press association, it's not a wire service, and Mr. Bosco is not a radio or T.V. station. Neither is he a person or corporation engaged in the making of newsreels or other motion picture news for public showing.

This doesn't apply to him, he's not a reporter within the meaning, or the definition that bestows on reporters T.V. stations, press, journalists, this privilege.

Your Honor, in addition to that, too, if you would find that he is a reporter, I believe that we've established that the public rights, Fontanille's rights override those First Amendment Rights. And that's enunciated in 45:1459 which says that the material is -- that the news, the tape -- you see, this keeps talking about news, unfortunately this

isn't a news event. But let's assume that it is a news event, then the tape is highly material and relevant. Obviously Kerry Myers spoke to Mr. Bosco on tape, and it is critical or necessary to the maintenance of Fontanille's defense.

And the third one is , not obtainable by any other source. We've questioned Myers, we've questioned Masson , and Jack Rau is dead.

THE COURT:

Is that your argument Mr. Noriea?

MR. NORIEA:

I'd like, in addition to that, Judge, I'd like to cite you the case of Cinel versus Connick, which is 792 Federal Supplement, 492, that's a Eastern District of Louisiana case. In re: Grand Jury Proceedings, Ridenhour 520 So.2nd, 372. Interpreting both of those cases, pursuant to the Louisiana Law and the Louisiana State Constitution as well as the Federal Constitution, we have a right to question Mr. Bosco on this relevant information that's critical for Fontanille's defense.

THE COURT:

Mr . Cotlar.

MR. COTLAR:

If Your Honor please, we seem to be getting into the argument over whether or not, obviously the argument over whether or not Mr. Bosco is entitled to the privilege.

I would point out to Your Honor, Section 1459 provides the procedure to be followed in the event the reporter makes his objection prior to being -- prior to the hearing, which we have done.

And it specifically says here , "Once objection is made", and I'm quoting from Section 1459, paragraph C, I don't know that we included it in the body of the memorandum.

THE COURT:

I don't see it Mr. Cotlar.

MR. COTLAR:

I will ask Your Honor to bear with me while I read you that portion. "Once objection is made, the party serving the subpoena shall not be entitled to compliance except pursuant to an order of the Court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the person who served the objection, for an order compelling compliance with such subpoena, after a hearing in conformity with provisions of subsection D of this section, and based upon the findings required therein."

So, it appears to me that now, since we have made our objection, if Mr. Noriea, who issued the subpoena was in agreement

with our objection we wouldn't go any further. Since he appears to be in disagreement with our objection, he needs to make his objection known, and set the matter for contradictory hearing to give us an opportunity to argue the points another day.

THE COURT:

Well, I take it that that's exactly what he did. But, I don't know about another time and another day.

What would be gained by that? The factual issues in the matter, it seems to me, are very simple. I'm prepared to go forward with the hearing right now.

MR. COTLAR:

We'll then we're prepared to go forward with our argument right now.

THE COURT:

All right. Is there any evidentiary proceeding that we need to conduct before your argument? Are there any facts in dispute?

MR. COTLAR:

Are there any facts -- well, Your Honor, yes there are some facts in dispute if we are proceeding first -- where Mr. Noriea has indicated he has complied with subsection B, wherein he's required

to show the information that he seeks from the reporter is highly material and relevant, is critical and necessary to the maintenance of a party's claimed defense, or proof of an issue material thereto, or is -- and, not or, and is not obtainable from any alternative source.

MR. NORIEA:

Judge, that's subsection C, I misquoted myself, it's subsection C, those three requirements. I'm sorry, I did say B, but it's --

MR. COTLAR:

No, subsection B are the three requirements.

MR. NORIEA:

No, look in subsection C, it applies to criminal matters, turn the page, it's on the next page, look at the top of the next page, that's criminal matters. "It's highly material and relevant, bears directly on the guilt or innocence of the accused." In this case, Fontanille's defense. "And is not obtainable from any alternative source."

MR. COTLAR:

That's fine --

MR. NORIEA:

That's why I'm -- I don't mean to interrupt you.

MR. COTLAR:

Okay.

MR. NORIEA:

But, that's why I brought Kerry Myers and Masson, to establish that, and Rau is dead.

We have no other source, Judge, and I think that's one of the things that we had to establish was, for the last part.

THE COURT:

Well, I guess actually it's my impression that you want to talk to Mr. Bosco about whether or not the statement made by Mr. Myers today in Court is correct.

MR. NORIEA:

That's precisely correct, Your Honor.

THE COURT:

Okay. Is there anything else that you'd want to add as part of an evidentiary hearing?

MR. NORIEA:

Not as an evidentiary hearing. I think I've fulfilled the only

subsection C part, that any other obtainable source we just don't have. Now, I didn't read Mr. Bosco's book, but if it is stated like that in the book, and I can put his book in evidence, then everybody might object to hearsay, and I don't know, frankly, if it's in the book. But, I think Mr. Bosco is the best evidence.

MR. COTLAR:

If what's in -- if the information that Kerry --

MR. NORIEA:

If Kerry Myers is quoted in the book as saying, "I received Masson's statement", and I don't know, I haven't read the book.

MR. LeBLANC:

Judge, can the State be heard on that particular part?

THE COURT:

All right, sir.

MR. LeBLANC:

Your Honor, if in fact Mr. Myers did say that to Mr. Bosco, Mr. Bosco's not the best evidence, it's Mr. Myers.

THE COURT:

Well, but he, Mr. Bosco , is being called as an impeachment witness.

MR. LEBLANC:

I understand that, Your Honor, and taken -- I don't think it's going to make any difference what Mr. Bosco testified to, whether he said that it was said or not, Mr. Myers is going to be faced with conflicting statements going towards his credibility, and you have that outweighed by Detective Masson. I don't think it's going to make any difference one way or another.

MR. NORIEA:

Do I detect that the State now believes Kerry Myers is a credible witness? Did I hear that?

MR. LeBLANC:

No, you didn't.

MR. NORIEA:

Oh, okay.

THE COURT:

Mr. Cotlar.

MR. COTLAR:

If Your Honor please, first I'd disagree with Mr. Noriea as to which section of -- which subsection of Article 1459 applies but be that as it may. The third item in both sections is that the information is not obtainable from any alternative source.

Mr. Noriea believes that that information that he is seeking is published in this book. We submit to you that it is not, that there is nothing in here that says Kerry Myers had any portion of Bill Fontanille's statement prior to giving his own statement.

THE COURT:

Well --

MR. COTLAR:

The only reference, if Your Honor will bear with me, in the book, to that, is on page 367 wherein Mr. Noriea is interviewed by Mr. Bosco, and he tells Mr. Bosco, and I'd better read it because otherwise somebody will indicate I quoted it wrong. "When did Bill --

THE COURT:

Wait, wait, wait, excuse me counsel, but now we're going back to exactly the same point that Mr. Noriea made earlier. We're not going to admit the book into evidence.

MR. COTLAR:

No sir, but I'm --

THE COURT:

The simple question before the Court, as I appreciate what Mr. Noriea's argument is, is whether or not Mr. Myers' testimony today, that he did not receive a copy of Mr. Fontanille's statement prior to making his own statement, is correct. He wants to call Mr. Bosco for the purpose of asking him whether or not Kerry Myers told him differently.

Do I appreciate the question properly?

MR. NORIEA:

That's correct, Your Honor.

MR. COTLAR:

I think that's correct, but he must meet the test of 1459, the last item of which is, "The information is not obtainable from any alternative source." And, the only point I'm trying to make there, Your Honor, is Mr. Noriea himself has told Mr. Bosco that certain Jefferson Parish Sheriff's office rank told Mr. Noriea that Mr. Masson gave Kerry Myers a copy of Bill Fontanille's statement before Kerry Myers gave his own statement.

So, there it is obtainable from another source, i.e., the Jefferson Parish Sheriff's office personnel who told Mr. Noriea.

THE COURT:

How do you know that Mr. Noriea made that statement?

MR. COTLAR:

The same way that Mr. Noriea believes Mr. Myers said it to Mr. Bosco, because Mr. Noriea told Mr. Bosco.

THE COURT:

You're both incorrect in assuming that I'm going to accept statements made in that book as evidence in this hearing, and that's certainly not the best evidence, particularly since Mr. Bosco is in court.

I think Mr. Noriea is entitled to call Mr. Bosco to the stand. There are obviously limits to that, and you can renew your objection to his testimony as we go along. But, in general terms he's being called as an impeachment witness to introduce his possible conflicting statements that Mr. Myers may have made to him. I think Mr. Noriea has met his burden of proof for calling Mr. Bosco.

MR. COTLAR:

Is Your Honor finding that -- making any determination at this point whether Mr. Bosco is a reporter or an investigative author entitled to the privilege?

THE COURT:

No, I don't think it's necessary to do that, because even if he is, under the statute 1459, he's entitled to call him if there's no other source of this information.

MR. COTLAR:

Well then, Your Honor, we get into the question of whether Mr. Bosco also has a privilege under the First Amendment of the United States Constitution, the right of free speech and free press, and the Louisiana Constitution. And it is my appreciation of the law on that subject, that if the information, whether confidential or nonconfidential, is unpublished, he has the right to assert his journalist privilege.

THE COURT:

Well, that's exactly what I've suggested to you Mr. Cotlar, is that I'm not going to say in general terms that he's required to answer any question put to him by Mr. Noriea. You should renew your objection in specific terms. That would not preclude his being called to the stand and asked certain questions. So, if he goes beyond his privilege, then object.

MR. COTLAR:

Then, Your Honor, without waiving any objection to Mr. Bosco being called as a witness at this time, he can take the stand.

THE COURT:

All right, sir.

MR. COTLAR:

As well as our belief that procedurally this hearing may be taking place sooner than the statute requires.

THE COURT:

Okay, sir. All right, Mr. Bosco.

MR. COTLAR:

Sir?

THE COURT:

I was just calling Mr. Bosco to the stand.

JOSEPH A. BOSCO, 5933 Stratford Place, New Orleans, Louisiana, was called as a witness, and after having first been duly sworn, testified on his oath as follows:

THE COURT:

All right, Mr. Noriea.

DIRECT EXAMINATION

BY MR. NORIEA:

Q. Mr. Bosco, did you write a book entitled "Blood Will Tell"?

A. Yes, I did.

Q. That book involved an interview with Kerry Myers concerning the death of Janet Myers?

A. Restate your question, please, again, Mr. Noriea?

Q. In writing that book, did you conduct an interview with Kerry Myers concerning the death of Janet Myers?

A. Yes, I did.

Q. How many times did you interview Kerry Myers?

MR. COTLAR:

Your Honor, I'm going to assert the objection at this time as to any questions regarding the book "Blood Will Tell", as to any items which are not published in the book, and assert Mr. Bosco's privilege as an investigative author.

THE COURT:

Mr. Cotlar, your objection is premature, that was not the question. The question was, how many interviews did he conduct.

MR. COTLAR:

Your Honor, our fear is that we will crack the door on whether the privilege -- whether we have waived the privilege, and it is very difficult to weigh each and every question to determine whether that crack is being urged at that time. And in an abundance of caution, I must advise Mr. Bosco that if he testifies regarding any information that is unpublished he may be waiving his privilege, and it is his desire to maintain that privilege and not waive it. So, that's the reason for the objection at this time, why --

THE COURT:

And you may -- I'm sure you're right in doing that Mr. Cotlar. But again, that was not the question, so I'm going to instruct Mr. Bosco, notwithstanding your objection, to answer the question.

MR. COTLAR:

With all due respect, Your Honor, and realizing that if Mr. Bosco continues to refuse a direct order from this Court to answer the question; I must advise him that he should not answer the question, and that Your Honor may very well hold him in contempt.

THE COURT:

All right.

MR. NORIEA:

Your Honor, I'd move that the witness answer the question that I previously asked.

THE COURT:

I've instructed him to do it and he's refused to do it. I'm going to deal with that --

MR. NORIEA:

I'd ask that he be held in contempt of Court.

THE COURT:

Well , I'm going to deal with that at the conclusion of the examination of the witness.

BY MR. NORIEA:

Q. Mr. Bosco, did you tape any of the conversation you had with Kerry Myers?

A. I must respectfully decline to answer and invoke my reporter's privilege guaranteed under the Louisiana Statute, the Louisiana constitution, and the First Amendment of the United States Constitution.

THE COURT:

Notwithstanding that, Mr. Bosco, I'm going to again instruct you to answer that question. The question does not fall within your protection under those provisions of law.

MR. BOSCO:

Your Honor, with all great respect, please sir, with great pain I must say, I have to decline to answer that by invoking my reporter's privilege under the Louisiana Statute, under the Louisiana Constitution, and our big constitution and its First Amendment Right.

MR. NORIEA:

May I proceed to ask another question, Your Honor.

THE COURT:

Yes, sir.

BY MR. NORIEA:

Q. Mr. Bosco, in any conversation you had with Kerry Myers, did he admit to you that he received William Fontanille's statements or portions thereof before he gave his statement?

A. I must respectfully decline to answer. I invoke my reporter's privilege guaranteed under the Louisiana Statute, the Louisiana Constitute, and the First Amendment of the United States Constitution.

THE COURT:

That objection is sustained, your question goes beyond where you were in the previous two questions.

BY MR. NORIEA:

Q. Did Kerry Myers ever admit to you that he had a copy of Fontanille's statement, or received information about Fontanille's statement before he gave the March 14th, 1984 statement?

MR. COTLAR:

Your Honor, I have not interposed my objection to each question, I would ask that it be continuing, and I specifically object to this question.

THE COURT:

You should do that on an individual basis Mr. Cotlar. I've told you before that as a general proposition, there's some questions that I feel that Mr. Noriea is entitled to ask and some that he's not. So, you're going to have to make your objection to each question as it --

MR. COTLAR:

Thank you. Well then, you ruled earlier, you sustained an objection that I hadn't made, I certainly urge that objection, and the

objection to this question.

MR. BOSCO:

Would you restate the question, please?

BY MR. NORIEA:

Q. At any time during any of the conversations you had with Kerry Myers, did he admit to you that he received a copy of Fontanille's statement, or received information regarding the contents of Fontanille's statement before he gave his own statement to Detective Masson?

MR. COTLAR:

Objection.

THE COURT:

That objection is overruled. I'm going to instruct the witness to answer the question.

MR. BOSCO:

Mr. Noriea, I must respectfully decline to answer. I invoke my reporter's privilege guaranteed under the Louisiana Statute, the Louisiana Constitution, and the First Amendment of the United States Constitution. I'm a reporter, sir.

MR. NORIEA:

Your Honor, the only other question that I would ask him is that if that information was given to him, was it in fact taped by him.

THE COURT:

Don't ask me.

MR. NORIEA:

No, no, I know.

BY MR. NORIEA:

Q. If that information was given to you, do you recall if it was taped or not?

A. Since--

MR. COTLAR:

Is that the --

MR. NORIEA:

Yeah, was it taped?

MR. COTLAR:

Objection.

THE COURT:

That objection is overruled.

MR. BOSCO:

Since --

MR. COTLAR:

Just --

MR. BOSCO:

I must respectfully decline to answer, and invoke my reporter's privilege guaranteed under the Louisiana Statute, Louisiana Constitution, and the First Amendment of the United States Constitution.

MR. NORIEA:

That's all the questions I have, Judge. I need those answers.

THE COURT:

I hope the State doesn't have any questions.

MR. LeBLANC:

Judge, I don't have the magic words.

THE COURT:

All right, Sir, thank you. Thank you Mr. Bosco.

MR. COTLAR:

Your Honor, for the purposes of the record, I believe it would be necessary to ask this witness questions regarding his status as a reporter. We have attached to the objection, an affidavit by Mr. Bosco, and unless we can stipulate that --

MR. NORIEA:

I haven't had a chance to look at this, Your Honor. Let me just -- can I just ask him some questions about his status?

BY MR. NORIEA:

Q. Mr. Bosco, do you write -- in connection with all your investigation, did you write a newspaper article about this case?

A. No sir, I did not.

Q. Did you write an article for any periodical that's issued at a regular interval, concerning this case?

A. It's a difficult question to answer.

Q. Well , let me just, let me get more specific.

A . Because there may in fact be a periodical piece that may appear somewhere, or sometime in serial work, I mean, in a certified

of publications, yes.

Q. You certainly would not consider the book, "Blood Will Tell" a periodical that's going to be issued at regular intervals?

A. No sir, not sir, but your question -- I'm sorry, please go ahead.

Q. And you're not a press association, are you?

A. I belong to the largest, strongest press association --

Q. But the book, the book is not part of a press association, is it?

A. It was written by a member of the press association. I'm a member of the American Society of Journalists and Authors; the most prestigious organization of authors and journalists.

Q. How about a wire service?

A. No sir, I'm not employed by a wire service.

Q. Radio station?

A. Many years ago.

Q. Not in connection with this book though?

A. No.

Q. Television station?

A. At the time that I wrote this book? Correct?

A. No, sir.

Q. During your investigation of writing this book, would you call this book a newsreel or motion picture?

A. There is a motion picture contract that I was under, and I am still under, when I entered into the beginning of my work. So, if you consider a television, news media, I would also include

then that I was.

Q. The book itself is not a motion picture?

A. Yeah, I mean, I think that's safe to say that there's an apple, and there's an orange, yes.

Q. Were you acting as a reporter for any newspaper, T.V. station, radio station, or any of those other organizations when you were doing your investigation for the book "Blood Will Tell"?

A. I was under contract to William Morrow, which is a wholly owned subsidiary of Hearst Enterprises, who owns any number of newspapers, press services and what-not.

Q. But you were not acting as a reporter --

A. I was most definitely acting in my roll as a reporter. I'm an author, I'm a journalistic -- I am an investigative journalist.

Q. You were not acting as a reporter for a newspaper, were you?

A. That's not what I said, no, no, you're correct, I was not.

Q. And you were not acting as a reporter for a periodical that was issued at a regular interval, were you?

A. Correct.

Q. And you were not acting as a reporter for a press association like UPI, or AP, were you?

A. The AP picked up some of my stuff, so actually, yeah. But no, I'm sorry, I was not under contract or being paid by AP.

Q. Right. And you were not acting as a reporter for a wire service when you did your investigation for the book "Blood Will Tell"?

A. No sir, I was not.

Q. And you were not acting as a reporter for a radio station when you did the investigation for the book "Blood Will Tell"?

A. No sir, I was not.

Q. And you were not acting as a reporter for a television station when you did your investigation for the book "Blood will Tell"?

A. Is that a question, sir?

Q. Yes?

A. I'm sorry?

Q. Were you not?

A. I was not, I'm sorry.

Q. And you were not acting for a corporation or person that made a newsreel when you conducted your investigation for the book "Blood Will Tell", were you?

A. We can split hairs there on the definition of a newsreel, because there is in fact, exactly that being done at this very moment.

Q. What newsreel company hired you to do the investigation for the book "Blood Will Tell"?

A. I think we might have a problem with the word "hired". There is newsreel footage and it will be airing very recently, very soon as a matter of fact, across this country.

And that certainly comes under the heading of a newsreel, yes. It's a documentary piece, news?

Q. But --

A. By a reputable news organization.

Q. But that book, "Blood Will Tell", is not the newsreel, is it?

A. No, it's the apple, they're the orange.

MR. NORIEA:

Your Honor, I have no further questions, and I have no objection to the introduction of, I guess it's going to be called Bosco exhibit number 1, which is his affidavit, as I read it.

THE COURT:

All right. Mr. Cotlar, do you have questions?

MR. COTLAR:

That's fine, Your Honor, we can label it Bosco number 1.

MR. NORIEA:

It's attached to the memo as I understand it.

MR. COTLAR:

That's correct.

I have some questions of Mr. Bosco regarding his status, Your Honor.

CROSS EXAMINATION

BY MR. COTLAR:

Q. Mr. Bosco, when did you enter into a contract to produce a manuscript on the Janet Myers murder?

A. Correct me if I'm wrong, I forget the exact date in January, but that was when the contract was finalized, it was --

MR. COTLAR:

Maybe we can get you a copy of it, just a moment.

MR. BOSCO:

Okay.

MR. NORIEA:

Isn't it in the affidavit? Isn't it number 7?

MR. COTLAR:

Not the affidavit.

MR. NORIEA:

Number 7.

MR. COTLAR:

No, I want to get the contract itself.

MR. BOSCO:

The day of the contract fails me at the moment.

BY MR. COTLAR:

Q. Mr. Bosco, I show you a document which I've marked Bosco number 2 for identification.

A. This is my --

Q. Wait for a question. And ask you if you can identify this?

A. This is my contract with William Morrow and Company to produce a manuscript, it was executed, the contract, on December the 19, 19 — I'm sorry, December — I can't read —12th of 1990, 12th of December, excuse me.

Q. December 12th, 1990 you entered into the contract with William Morrow and Company to write this manuscript, is that correct?

A. Yes, I was. Yes, I did. Yes, whatever. I did it .

Q. In that contract, it refers to the title "Spatter"?

A . Yes.

Q. What is the connection between , "Spatter" and "Blood Will Tell"?

A. When one is writing a proposal for a book contract to a publisher, of ten you will use a descriptive term that may or may not ever be actually the title. At this time we were simply identifying it, and I think all those people that know about the case will understand why that term was used, and I don't really feel it's in good taste to bring it back up.

Q. I show you a document which I've marked Bosco number 3, and ask you if you can identify it?

A. Yes, this is a Hollywood -- a letter of agreement actually, between myself and Hearst Enterprises, Inc., to make a motion picture of the book that would be forthcoming, which would at sometime be titled "Blood Will Tell".

Q. And what is it --

MR. NORIEA:

I don't want to correct you but isn't it Hearst Entertainment?

MR. BOSCO:

Hearst Entertainment, I'm sorry. You're absolutely correct, it's Hearst Entertainment, who is owned by Hearst Enterprises, I'm sorry.

BY MR. COTLAR:

Q. And when did you enter into that contract?

A. On February the 22nd of 1991.

Q. That contract gives Hearst certain rights regarding your work, "Blood Will Tell", is that correct?

A. Absolutely, yes.

Q. And what are those rights, if you can tell us?

A . Well , they take a whole bunch of pages to say it, as what they can and cannot do. Basically, they were to follow the spirit, and the truth, and the sum and substance of what my book would be. It was not to be a piece of exploitative television.

Q. As stated in your affidavit, Bosco number 1, that contract granted Hearst the exclusive option to the theatrical television motion picture, and certain related rights in and to the to-be published book, correct?

A. That is correct.

Q. I show you a document which I've marked Bosco 4 , and ask you if you can identify it?

A. That was the second -- in Hollywood they take an option, and you have to renew it each year. This was a renewal of that original option, dated here, September the 17th, 1992. Wait, revised September --

Q. It's dated August 24, 1992, and then --

A. I'm sorry, you're right, dated August 24th, 1992; revised September the 10th, 1992, and September the 17th, 1992; superseding the agreement of February of whatever.

Q. Did you commence your news gathering for your manuscript after you entered into Bosco number 2?

A. Absolutely. I don't write on spec, I can't afford to. I'm a full-time professional author, that's all I do, so I -- I sell a book before I even write it.

Q. Have you written any other books besides "Blood Will Tell"?

A. Yes.

Q. What book have you written?

A. In the summer of 1990 was released, also by William Morrow, my current publisher, a book called "Blood" -- I'm sorry, "The Boys Who Would Be Cubs" which was a non-fiction investigative piece as to exactly what happens in the minor leagues of baseball, that black hole most young men seem to get swallowed up in and are lost. So, yes.

Q. I show you a document which I've marked Bosco number 5, and ask you if you can identify it?

A . Yeah, this is one of the happiest moments in my life. I signed this contract on the 29th day of February, 1988, with William Morrow and Company, for me to produce a book called "The Boys Who Would Be Cubs"

Q. When was "The Boys Who Would Be Cubs" published?

A. It was released in late July of 1990.

Q. And then it was in December of '90 that you entered into the contract to write "Blood Will Tell"?

A. Yes I went on a national tour for awhile there, so there was a lag time, in the release of that, you know, I took some time off, and then I commenced the research part of the book "Blood Will Tell".

Q. Paragraph 11 of your affidavit says you've worked at your profession

as an author, specifically an investigative author, from 1988 to the present. Is that a true statement?

A. Absolutely, yes sir.

Q. What professional associations are you a member of?

A. Well, I'm very, very honored, I've just recently been inducted into the most prestigious of all writer's organizations, PENS; I am also recently inducted into the American Society of Journalists and Authors. Those two are only by invitation, only certain authors whose work is judged to whatever or not they want. And I'm also a member of the Authors Guild, and the National Writer's Association.

MR. BOSCO:

Judge.

THE COURT:

Sir?

MR. BOSCO:

May I have a sip of water?

THE COURT:

Sure.

MR. BOSCO:

Please, sir.

THE COURT:

Sure.

MR. BOSCO:

My mouth is starting to stick to the tongue here.

MR. NORIEA:

I'll move from behind you if you want.

MR. BOSCO:

No, you're fine there, I have no problem with you. You can always stand at my back, I trust you.

THE COURT:

Do you want a short recess Mr. Bosco, or you just want a glass of water?

MR. BOSCO:

I would like just a sip of water.

THE COURT:

Okay.

MR. BOSCO:

Sometimes when I get nervous my mouth gets dry, and I start stumbling over words, and I'd rather not make a fool of myself.

THE COURT:

Mr. Cotlar, while we're waiting for the water, why don't you try one more question to see if Mr. Bosco can --

MR. BOSCO:

Oh, I can go ahead, there's no reason I thought you all was conferring over something.

MR. COTLAR:

Yes, Your Honor.

BY MR. COTLAR:

Q. Mr. Bosco, pursuant to your contract with William Morrow and Company to write the manuscript "Blood Will Tell", are you the custodian of records regarding your investigation for William Morrow and Company?

A. If custodian means that I have total control of them, in my possession, is that what you're saying?

Q. Do you maintain those records, the results of your investigation on behalf of William Morrow and Company?

A. Well, absolutely, yes.

MR. COTLAR:

Just one moment, Your Honor.

(THE BAILIFF BROUGHT MR. BOSCO SOME WATER)

MR. COTLAR:

Your Honor, in connection with the testimony of the witness, I would offer Bosco 1, 2, 3, 4, and 5.

THE COURT:

Any objection to any of those documents?

MR. NORIEA:

We have no objection, Your Honor. But, I'd like to ask Mr. Bosco about some of those documents.

THE COURT:

All right. Well, the documents will be received in evidence.

MR. COTLAR:

That's all I have, Your Honor.

REDIRECT EXAMINATION

BY MR. NORIEA:

Q. Mr. Bosco, let me show you Bosco number 2, you are referred to as the author, is that correct?

A. That is correct, yes sir.

Q. Also you have an author's warranty, is that correct?

A. That is correct, yes sir.

Q. Let me show you Bosco number 3 , in this letter of agreement with Hearst Entertainment, you too are referred to as Joseph Bosco, author, is that correct?

A. Yes sir, absolutely, it's true.

Q. Likewise in Bosco number 4, you too are referred to in the agreement with Hearst Entertainment as Joseph Bosco, as the author?

A. Yes sir, you're correct.

Q. Now, in those agreements with Hearst Entertainment, you, as the author of "Blood Will Tell", assigned the movie rights to that entity, is that correct?

A. Yes, and may I add a bit to that?

I was also going to be doing the overall -- in other words, I was not giving up creative license to them, they could not take the book and just do whatever they wished with it. It was going to be a journalistic movie.

Q. I understand. But your function vis-a-vis Hearst Entertainment was to author a book for them to make a movie about?

A. That is correct, yes sir.

Q. Bosco number 5, this is an agreement, this is the first book, "The Boys Who Would Be Cubs", so we don't -- but in that agreement with the publisher, you too are referred to as the author, is that correct?

A. That is correct, yes sir.

Q. And you too give an author's warranty, that's correct?

A. Yes sir, that's correct.

Q. And none of these agreements have the word reporter in there; investigative reporter, do they?

A. They sure will after this.

MR. NORIEA:

I have no further questions, Your Honor.

THE COURT:

Does the State have any questions?

MR. LeBLANC:

No, Your Honor.

THE COURT:

Thank you, Mr. Bosco.

MR. NORIEA:

Your Honor, Mr. Cotlar, I think, says that's his only copies; we have no objection to substituting copies of those documents.

MR. COTLAR:

In fact, those are the originals, Your Honor, because we weren't prepared to produce them at this time.

THE COURT:

All right, well you can substitute your copies for the originals.

MR. NORIEA:

Judge, I would reurge that the Court hold Mr. Bosco in contempt of court.

THE COURT:

I'm going to read the memorandum submitted by Mr. Cotlar before I make a decision on whether he's in contempt.

MR. NORIEA:

Could I file a memorandum too, Judge, or do you want to do that today, or what?

THE COURT:

No, I'll allow you time to file a memorandum, a short time,

I'm going to rule on all these matters early next week.

MR. NORIEA:

Tomorrow; we can get it tomorrow.

THE COURT:

That's fine.

MR. COTLAR:

If Your Honor please, we'd like some time to perhaps respond to his memorandum.

THE COURT:

Well all right, I'll give Mr. Noriea until Tuesday to file his memorandum, and I'll give you until Wednesday to reply.

MR. COTLAR:

That's fine, Your Honor. Your Honor, to clear the record --

THE COURT:

Should it be necessary.

MR. COTLAR:

Right, well, we'll let you -- I'll certainly call the Court --

THE COURT:

I'm going to rule on the initial objection by the State before I make any ruling in the case. And I expect to do that Monday or Tuesday of next week.

If the State is correct, and Mr. Noriea has chosen the improper procedural vehicle for bringing this motion, I would assume that the contempt is moot.

MR. NORIEA:

You assume what, Judge?

THE COURT:

That it's moot. So I'll rule on that issue --

MR. COTLAR:

For the purposes of that portion of the record relating to Mr. Bosco, and the fact that I did not object to the individual questions that Mr. Bosco responded to with his statement regarding the privilege, I would like to assert my objection to each one of those questions so that we preserve our right in the record.

THE COURT:

All right, sir.

All right, is there anything else to be submitted on the matter of the motion for a new trial?

MR. NORIEA:

No, Your Honor, we've offered and filed into the record, Fontanille 1 and 2, which were the two statements, which is probably already in this record some place.

THE COURT:

All right, does the State have anything to add, from an evidentiary standpoint?

MR. BOUDREAUX:

No, Your Honor.

MR. LeBLANC:

No, Your Honor.

THE COURT:

All right. Is the matter submitted?

MR. LeBLANC:

Yes, Your Honor.

MR. BOUDREAUX:

Yes, Your Honor.

THE COURT:

All right, thank you counsel. I'll rule on this matter either Monday or Tuesday of next week.

MR. COTLAR:

Thank you, Your Honor.

THE COURT:

On the initial matter, the matter of the procedural objection.

MR. COTLAR:

Your Honor, we need to make an appearance of Mr. Leonard Davison behalf of Mr. Bosco as well.

THE COURT:

All right, sir.

MR. COTLAR:

Thank you.

MR. DAVIS:

Thank you.

(THEREUPON THE PROCEEDINGS CONCLUDED)

CERTIFICATE

I, Martha Duley, Certified Court Reporter, do hereby certify that the foregoing transcript is true and correct as taken by me in open court in Gretna, Louisiana, before the Honorable Ernest V. Richards, IV., Judge presiding, on the 4th day of November, 1993, in the matter entitled, State of Louisiana versus Kerry Myers and William Fontanille, number 8 7 - 3 2 8 0.

Signed By
MARTHA DULEY
CERTIFIED REPORTER
24TH JUDICIAL DISTRICT
PARISH OF JEFFERSON
STATE OF LOUISIANA

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NO: 87-3280 DIVISION "B"

STATE OF LOUISIANA

VERSUS

KERRY MYERS AND WILLIAM FONTANILLE

Transcript of proceedings and testimony taken in the above numbered and entitled cause on Wednesday, November 10, 1993, before the Honorable Ernest V. Richards, IV., Judge presiding.

APPEARANCES:

Terry Boudreaux, Esq., and
W. J. LeBlanc, Jr., Esq.
Assistant District Attorneys

Nick F. Noriea, Jr., Esq.
Attorney representing the defendant,
William Fontanille.

Sidney Cotlar, Esq.,
Leonard Davis, Esq., and
Tom Wilkinson, Esq.
Attorneys representing
Joseph Bosco

REPORTED BY: MARTHA DULEY, C.C.R.

APPENDIX II-B

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PROCEEDINGS

MR. LEBLANC:

Your Honor, this is case number 87-3280, State of Louisiana versus William Fontanille.

W. J. LeBlanc and Terry Boudreaux for the State.

THE COURT:

Mr. Noriea, would you make you appearance for the record.

MR. NORIEA:

Your Honor, I'm Nick Noriea representing William Fontanille.

MR. COTLAR:

Your Honor, Sidney Cotlar and Leonard Davis representing Joseph Bosco.

THE COURT:

Mr. Wilkinson, are you going to make an appearance in this matter?

MR. WILKINSON:

Your Honor, on-behalf of Joe Bosco, Tom Wilkinson.

THE COURT:

All right. Counsel, are you ready to proceed?

MR. NORIEA:

Yes, Your Honor.

THE COURT:

The record should reflect that at last Monday's hearing, the question of whether Mr. Bosco should be held in contempt for not answering questions put to him by Mr. Noriea was deferred pending a determination of the procedural objections that the State had made to Mr. Fontanille's motion.

Those matters have now been resolved so that it's now incumbent on this Court to make a ruling on Mr.. Fontanille's motion.

In connection with that, it becomes necessary to again order Mr. Bosco, who is present in Court, to respond to the questions put to him by Mr. Noriea, and I'm going to ask Mr. Bosco to do that.

MR. COTLAR:

Your Honor, prior to Mr. Bosco taking the witness stand, we'd ask the Court to note for the record that we have, this afternoon, prior to this hearing, filed a motion and notice of appeal, and/or writ, which was presented to Your Honor earlier.

And based upon that motion , we would object to this proceeding going forward at this time.

THE COURT:

Well counsel, I have not made a ruling as of yet, except in the written order that I have sent to you and to Mr. Bosco. I have found that he is in fact not a reporter within the meaning of the statute that grants a reporter immunity. I, beyond that, have not done anything for which I think you're entitled to an appeal, or from which to apply for a writ.

MR. COTLAR:

Your Honor, I appreciate that. The basis for the appeal is in the order of November 8th, that you have. And it states that Mr. Bosco -- you have determined that Mr. Bosco is not a reporter and not entitled to the privilege, and you have ordered him back to court to show cause why he should not answer the questions that were propounded to him on November the 4th.

THE COURT:

Not precisely, Mr. Cotlar. I have ordered him --

MR. COTLAR:

I'm sorry then --

THE COURT:

I have ordered him to be here to show cause why he should not be held in contempt of court. Not why he should not answer the questions.

MR. COTLAR:

Well, I was just -- I thought I was almost saying verbatim what the order said.

It says ,"To show cause why he should not answer the questions posed to him at the November 8th", which is a typo, it should be November 4th, "hearing on Fontanille's motion." It didn't mention the word contempt, but we understand that that's the penalty for not answering.

THE COURT:

All right sir , then I stand corrected, you're correct. All right.

MR. COTLAR:

Again, Your Honor, in accordance with the reporter's shield statute, Louisiana Revised Statute 45, Section 1459 E, it states, as I appreciate it, that while we are appealing the decision of this Court, which is contrary to Mr. Bosco's position, that the privilege remains in tact. And that's why we do not believe it's appropriate to go

forward with this hearing at this time.

THE COURT:

Well, except for the fact that that statute which you -- have a seat Mr. Bosco, we're not going to penalize you for having a seat.

That statute provides for the appellate process that you mentioned, in the event that a reporter refuses to answer the questions put to him in Court.

The determination of this Court is, that Mr. Bosco is not in fact a reporter and is not entitled to the appellate procedure that it provided for a reporter under the circumstances described in that statute.

So, I am again going to order him to address the question of whether he should answer those questions.

MR. COTLAR:

Well, subject to my objection, obviously we will proceed in accordance with Your Honor's ruling.

THE COURT:

Mr. Bosco, do you recall the substance of the questions put to you by Mr. Noriea at last Monday's hearing?

MR. BOSCO:

Yes, Your Honor.

THE COURT:

It is very distasteful to me --

MR. LeBLANC:

Your Honor, may I, I don't believe the witness has been sworn.

THE COURT:

All right, I'm sorry.

JOSEPH A. BOSCO, 5933 Stratford Place, New Orleans, Louisiana, was called as a witness, and after having first been duly sworn, testified on his oath as follows:

THE COURT:

Again, this is not a proceeding that I am happy about conducting.

The fact of the matter is that Mr. Fontanille has applied to this Court for certain remedies which he believes that he's entitled to. It's the obligation of this Court to conduct an inquiry to determine whether or not there's a factual basis for the relief that he's requested, and determine whether or not he should in fact be kept in jail. Mr. Fontanille has made a showing to the Court that the information that

he seeks from you is essential to his pursuit of the remedies that he's requesting this Court to grant him. I cannot do that because of your failure to answer the questions, and I simply cannot permit that to happen.

So, I'm again going to ask that you answer the questions put to you by Mr. Noriea at last Monday's hearing.

MR. BOSCO:

Do I address that now?

THE COURT:

Yes, sir.

MR. BOSCO:

Or do I wait for a question?

THE COURT:

No, you should tell me whether you're going to answer the questions that have already been put to you by Mr.Noriea.

MR. BOSCO:

Your Honor, with all due respect, I must continue to decline to answer, based on my privilege as a reporter, by Statutes of Louisiana, of the Louisiana Constitution, and the First Amendment of the

United States Constitution.

THE COURT:

All right, sir. As I've stated to you in writing, I do not believe that any of the laws that you've cited entitle you to persist in the actions that you're taking now.

And accordingly, I do hold you in contempt of this Court, very reluctantly. I'm going to order that you be incarcerated in the Jefferson Parish Correctional Center until such time that you purge yourself of the contempt of this Court by answering the questions.

As I told your attorneys, I'm not going to issue a stay order in this case, the execution of that order, because I think that Mr. Fontanille is entitled to a timely determination of the petition that he's filed in this Court.

However, I am going to suspend the execution until next Wednesday afternoon at 1:30; that's November the 17th, to allow your attorneys- time to request a stay order from another court.

If they have not obtained such a stay order by that time, I'm going to order you to report to the Jefferson Parish Correctional Center, and to stay there until you have answered the questions as directed by the Court.Wednesday afternoon at 1:30; that's November the 17th, to allow your attorneys- time to request a stay order from another court.

If they have not obtained such a stay order by that time, I'm

going to order you to report to the Jefferson Parish Correctional Center, and to stay there until you have answered the questions as directed by the Court.

Does anyone else involved in this case have anything else to add to these proceedings?

MR. NORIEA:

No, Your Honor, not on behalf of Mr. Fontanille.

MR. COTLAR:

Your Honor, in connection with the Court's ruling, please note our intention to apply for writs to the Fifth Circuit.

THE COURT:

All right, sir.

Thank you, Mr. Bosco.

MR. BOSCO:

Thank you, Your Honor.

MR. NORIEA:

Your Honor, with respect to our motion, obviously it's going to stay open until some ultimate determination of these last facts come out. So, I guess this will just stay as an open matter

pending --

THE COURT:

All right, it's continued without date at this point.

(THEREUPON THE PROCEEDINGS CONCLUDED)

B/14695/84

MASSON: The following statement is being taken from William A. Fontanille, white male, date of birth 8/23/55, who resides at 2220 Northbrook, Gretna, La. Statement is being taken by Sergeant Robert Masson, Jefferson Parish Sheriff's Office Homicide Unit, on Saturday, February 25th, 1984 at the Jefferson Parish Sheriff's Office Detective Bureau. This statement begins at approximately 2:50 AM. Mr. Fontanille, were you advised of your rights?

FONTANILLE: Yes sir, I was.

MASSON: A little bit louder.

FONTANILLE: I'm sorry, yes sir, I was.

MASSON: Did you sign a standard Rights form?

FONTANILLE: Yes sir, I did.

MASSON: Are you willing to make a statement at this time?

FONTANILLE: Yes sir.

MASSON: How much education do you have?

FONTANILLE: I have a degree in Marketing from S.L.U.

MASSON: Where are you currently employed?

FONTANILLE: I'm unemployed.

MASSON: What type of work do you do?

FONTANILLE: I work for McDermott in the shipping end of it.

MASSON: How, long have you been unemployed?

FONTANILLE: Since July of 83.

MASSON: Are you married?

FONTANILLE: I'm separated.

MASSON: What is your wife's name?

FONTANILLE: Susan Fontanille.

MASSON: Where is she residing now?

FONTANILLE: She's current living at 2221 St. Nick in Algiers with her parents.

MASSON: Do you have any children?

FONTANILLE: I have a 14 month old son named Matthew.

MASSON: Do you know Kerry Myers?

FONTANILLE: Yes sir, I do.

MASSON: How long have you known Kerry?

FONTANILLE: Probably since junior or senior year of high school.

MASSON: What high school did you go to?

FONTANILLE: Archbishop Shaw.

MASSON: Do you know his wife?

FONTANILLE: Yes I do.

MASSON: What's his wife's named

FONTANILLE: Janet.

MASSON: How long have you known Janet?

FONTANILLE: Five to six years.

MASSON: When did you last see Kerry?

FONTANILLE: Thursday, night, Friday morning, Thursday and Friday.

MASSON: Approximately what time did you see him?

FONTANILLE: I first saw him around 4:00 PM Thursday to around 2:00 AM Friday morning.

MASSON: Where did you see him?

FONTANILLE: At his home in Woodmere.

MASSON: Why did you go to his house?

FONTANILLE: I had gone over there to pick up a baseball bat that I had been using as a cane. I had left it there previous night.

MASSON: Why did you leave the baseball bat at his house?

FONTANILLE: I had gone over to his house Wednesday night. We were gonna play basketball together and I arrived at his home at about 7:30. I left the bat there. Two other friends picked us up. When they brought us back to Kerry's house I just got in my car and left, and just left the bat in his house.

MASSON: How many times were you at Kerry's house on Wednesday?

FONTANILLE: Twice.

MASSON: What time did you get there the first time?

FONTANILLE: Around 1:00 PM in the afternoon.

MASSON: How long did you stay?

FONTANILLE: Stayed till about 5:00.

MASSON: Was anyone there when you got there?

FONTANILLE: Janet was there and the two children.

MASSON: What time did Kerry get home?

FONTANILLE: He came home about 3:30, between 3:30 and 4:00 I guess, stayed for about 45 minutes, went back to the office. And then I left before he came back again.

MASSON: What took place between you and Janet?

FONTANILLE: We sat down. We were talking about my separation from my wife and she became very comforting to me. And I suppose I was very appreciative at that. And we ended up in, well, I'm gonna say, we didn't go to bed. We, made love in the baby's room. We were looking out the window while we were doing what we did.

MASSON: Why were you looking out the window?

FONTANILLE: We were afraid Kerry might come home. On Wednesdays she says that she's never sure what time he'll come home.

MASSON: How many times have you been together with Janet?

FONTANILLE: Under circumstances like I just spoke of never before. Never.

MASSON: You've never had sexual relations with her before?

FONTANILLE: No Sir, never.

MASSON: Whose idea was it to have sexual relations?

FONTANILLE: It was mutual, sir.

MASSON: Was Kerry aware of your intimacy with his wife?

FONTANILLE: I can only, speculate and say he was. He did not say anything to me other than he did what he had to do. He didn't accuse me of anything.

MASSON: When was the last time before Wednesday that you were at the Myers house?

FONTANILLE: Tuesday.

MASSON: How often do you go over to their house?

FONTANILLE: Not very often at all. I hadn't seen either one since before Thanksgiving and I can't remember the last time I was at their house. Not that often.

MASSON: Why have you been avoiding them?

FONTANILLE: I've been embarrassed about being unemployed. I've been avoiding all my friends. Something I don't like to talk about.

MASSON: What time did you get over to the Myers house on Thursday?

FONTANILLE: Between 3:30 and 4:00, probably closer to 4:00.

MASSON: Where did you park your car?

FONTANILLE: I parked it down the block.

MASSON: In which direction?

FONTANILLE: Going away from Lapalco.

MASSON: Why did you park down the block?

FONTANILLE: I didn't want to park my car in front of the house and have Kerry drive by. I wasn't sure if he expected that Janet and I had done what we did and I didn't want to cause any trouble. I figured if I parked my car down the block, I'd just go in, get my bat and leave. And if he did just drive by without stopping he wouldn't, he wouldn't stop he'd just drive by but if he saw my car then he might suspect something. I parked my car. When I walked to the house Kerry was there already. So I figured what the heck that he can't expect anything. So I knocked on the door and went in.

MASSON: Explain what happened when you got inside the residence?

FONTANILLE: Kerry opened the door for me. I guess I took two or three steps and then he hit me from the rear. At the time it seemed like I was stabbed twenty times in the back. It, it's three wounds back there. I guess some of them were just punches. I ran into the room where they keep their television set. Leaning against the love seat was the baseball bat. I picked it up. Kerry came into the room and we looked at each other. I said, "Kerry, why are you doing this to me. I don't understand." I was, I was hysterical. I thought I was

dying. He just said, "I'm doing what I've got to do." Said, " I'm doing what I've got to do." He came at me again with the knife and I started swinging the baseball bat. I don't know how many times I hit him. I know I did hit him in the arm with the baseball bat cause he later said I broke his arm. I lost control of the bat while we were struggling cause I was more concerned with keeping that knife away from me than anything else. We struggled around. I was picking up anything I could find, cup, an ashtray, anything, little glass objects that I was hitting with it. Finally, we both fell to the floor. Neither one of us could get control of the knife. We both had our hands on it. And we stayed there, I was hysterical. I just kept asking Kerry to please let me go, please let me go. He kept telling me I didn't understand, just to be quite while he thought things out. We stayed in that position I guess for 45 minutes or so. I kept saying, Kerry, I think I'm dying." So finally he told me if we got up he wouldn't hurt me anymore, he'd just let me be. So he got up. He sat on the sofa and I sat on the floor. And we sat there again for an hour without saying a word. Then he turned the tv set on. We watched television from around 7:00 till 11:00,

11:30, I don't know. During that time he allowed me to get up a couple of times to go get water our of the kitchen. I tried to call an ambulance while I was in the kitchen once. He stopped me from doing that. I tried to find a knife of my own in one of the drawers but again I was too afraid to do anything cause I didn't want him to pull the knife on me again. I was still, still thought I was in a lot of trouble physically. Around 10:00 or so he agreed that he wouldn't hurt me anymore and that he would call an ambulance. And he went to the phone and made, dialed, and I thought he was speaking to a hospital, apparently he wasn't. We waited and waited. He allowed me to get up twice and go to one of the bedrooms and look out the window to see if the ambulance was there, which I guess was just to keep me calmed down, I don't know. Between 11:00 and 11:30, I don't know what time it was. I know Starsky and Hutch was on tv. That's the only thing I can remember. I said, "Kerry, I got to go to the bathroom very bad." I got up and he got up behind me and I was walking toward the hall and he lunged at me again with the knife and we started struggling. We struggled down the hall. I was stabbed twice more, and apparently he was stabbed

too. Although when I asked him if he was stabbed he told me he wasn't. We came to rest at the end of the hall towards the bathroom. Again each of us having control of the knife. And again it was just more of the same. I was just begging that he let me go. I was really convinced that I was in trouble now cause the two chest wounds were both fairly deep. Then he started talking about he's got problems that I don't know anything about and that I would never know. So I started telling him about my problems, how I'm separated from my wife, how I might lose the house that I just bought. I haven't seen my son since December, which shook him up quite a bit about not seeing my son. And he told me that he would help me get my son back, that we could go to my wife's parents house and get my son without hurting anyone, just scaring them. So I agreed with him. I said, " That's a real good idea." So we made plans to go there the next morning and get him. And we were gonna wait in the hall, each of us holding the knife so we couldn't do any more damage to each other until it was time for us to leave. I guess we were there in the hallway, for two hours when I , when I felt that his grip on the knife was loosening

up. And when it did I took off down the hall. I guess I had taken about three or four steps and I heard him coming behind me. I went out the front door. He followed me and shouted something out the front door that, I couldn't make out what it was. I was running too hard. I was too scared. I never did see Janet or the children although I did hear the infant, the little girl crying in one of the rooms. Also, when we were laying back there he was looking under the door into his bedroom, said that Ryan was in there. He didn't want Ryan to come out and see what had happened. He asked that, when he asked me, when he saw Ryan move if I would hold the door and not let Ryan out, just hold the door where he couldn't get out. There was a couple for times when he asked me to do that. That's pretty much what I remember, sir.

MASSON: Which bedroom was Ryan in?

FONTANILLE: He was in Kerry and Janet's bedroom.

MASSON: Could you see under the door?

FONTANILLE: No sir, I never did look. I never did look under the door.

MASSON: Why did he want you to hold the door?

FONTANILLE: He said that he didn't want Ryan to come out and see what had happened. So while he was looking under

the door whenever Ryan moved, and he was moving cause I could hear him, he asked that I hold the door.

MASSON: Was Ryan crying?

FONTANILLE: No sir, I never heard him cry.

MASSON: Did he say anything?

FONTANILLE: No sir, I didn't hear anything like that, just heard movements.

MASSON: Can Ryan talk?

FONTANILLE: Oh, yes sir.

MASSON: Did you see the other baby?

FONTANILLE: No sir, I just heard her crying.

MASSON: Was the door to the other baby's room open or closed?

FONTANILLE: It was closed but I don't think the, the bolt was locked, you know, it was, it was shut without being locked, know what I mean.

MASSON: What was Janet wearing Wednesday when you saw her?

FONTANILLE: She had some type of leotards on.

MASSON: What color?

FONTANILLE: They were white, the leotards were white. And I think she was wearing shorts or something. I don't I can't remember, sir. Oh, I take that back. She had, the top was black, the top was black and the leotards

that went down her legs were white. That's what she had on. Its was a strange outfit.

MASSON: What kind of car do you have?

FONTANILLE: I have an 81 Toyota Celica.

MASSON: What color is it?

FONTANILLE: Dark brown.

MASSON: How were you dressed?

FONTANILLE: On which day, sir?

MASSON: Thursday.

FONTANILLE: I had a pair of blue jeans on and a blue Izod sweater, pair of tennis shoes.

MASSON: How was Kerry Dressed?

FONTANILLE: He had a tie on. About the only thing I can remember. I think he had dressed to go to work or was coming back from work. He wasn't casually dressed or anything like that.

MASSON: At any time while you were there did he check on the children?

FONTANILLE: No sir, he never left me alone.

MASSON: Did he ever walk by any of the other doors to the den?

FONTANILLE: There was a rifle, a shotgun, that was on the loveseat when I came in that we both wrestled for and it ended up on the floor. Neither one of us, you know, do

anything with it.

MASSON: Do you know if it was loaded?

FONTANILLE: He told me it wasn't loaded.

MASSON: Did you bring any ammunition for the gun to the house?

FONTANILLE: No sir, he had three shells that were on the, on the rack where he kept the gun cause the previous night I had tried to juggle them. So I know he had three up there. I don't know if it was loaded or not.

MASSON: Did you ever go in any of the bedrooms?

FONTANILLE: I went into the first bedroom twice during the night cause he had told me he called an ambulance and when I heard doors slam I asked if I could see if it was an ambulance. And twice he let me go in the first bedroom and look out the window. But there wasn't any ambulance. Now I was in Janet's bedroom the day before. I got some money out of her drawer. She had asked that I go to Wendy's with her, and I said, "I don't have any money". And she was getting dressed in the bathroom in her bedroom. She said, "There's some money in that drawer." So I don't know which drawer I opened up. There was a five and some ones. I took the five and left the ones in there.

MASSON: Took it out of her dresser, a desk, or chest of drawers?

FONTANILLE: It was on the, when you walk into the doors immediately to the right. I don't know if it was a dresser or what it was. Those were the only two bedrooms I, well, to be honest with you I was in all three bed rooms cause we made love in the infant's bedroom.

MASSON: Did Janet ever talk to you about any problems she was having with Kerry?

FONTANILLE: She told me when we were speaking about my marriage, and she said they had the same little problems like everyone else has, and that there were occasions when they thought they weren't going to make it either. But you get, she was trying to comfort me I'm sure, told me you get past it and it all works out. But she did indicate that they had the same problems that any other couples had.

MASSON: What kind of baseball bat did you have?

FONTANILLE: It was an aluminum bat, softball bat.

MASSON: What color was it?

FONTANILLE: Green and silver, I believe, green and silver.

MASSON: What color handle does it have?

FONTANILLE: Black rubber handle.

MASSON: Where do you normally keep this bat?

FONTANILLE: Well, normally I just keep it in the closet in the garage at home. I been using it the last couple of weeks as sort of like a cane cause my back hurting. So I just been taking it with me wher ever I went.

MASSON: Have you ever kept it in the car?

FONTANILLE: Oh yes sir, yes sir.

MASSON: Did you have the bat with you Thursday when you went over to the house?

FONTANILLE: No sir, I did not. I had left it there the previous night.

MASSON: Did you have the bat with you Wednesday when you went to the house?

FONTANILLE: Yes sir, I was at the house twice Wednesday and I had the bat with me both times.

MASSON: When you went to the house Tuesday, did you have the bat with you?

FONTANILLE: Yes sir, I did.

MASSON: Did you go to the house Monday?

FONTANILLE: No sir, I didn't.

MASSON: What time did you get to the house Tuesday?

FONTANILLE: I, it must have been late in the afternoon, around 5:00 because Kerry was home. He was home from work already.

MASSON: How long did you stay?

FONTANILLE: Oh, till around 7:00 and then they were going out or

leaving to get something to eat. I thought I was keeping them so I left.

MASSON: What kind of knife did Kerry have?

FONTANILLE: It was a (INAUDIBLE) kitchen knife. I never really saw it. It was about six inches in length, I think the blade, maybe longer.

MASSON: What color was it?

FONTANILLE: I couldn't tell you, sir, I don't know.

MASSON: What kind of handle did it have?

FONTANILLE: It looked like a wooden, it felt like a wooden handle. I did grab on to it for awhile, felt like it was made out of wood.

MASSON: You mentioned some cups earlier. What color were the cups?

FONTANILLE: Well, a cup that I hit him with was either, I think it was tan and had some kind of liquid when I hit cause the liquid splattered all over. It might have been coffee or something in it. And I picked up something that was gold, and it was, cause we were, we had fallen on the love seat and the love seat moved and it moved in front of the counter going to the kitchen. And they had little knickknacks up on the counter and I was just grabbing for anything I could, and just swinging, hitting him with it.

MASSON: Did they have anything on the love seat?

FONTANILLE: The, the gun was on the love seat. When I, when I walked in the baseball bat was leaning against the love seat and the gun was sitting on top of it. I think that was all that was on the love seat. An the gun somehow wound up on the floor up against the, I think over by the tv set, right across from the tv set.

MASSON: How was Janet killed?

FONTANILLE: To this day I don't know. No one's ever told me. I didn't know she was killed until this afternoon. My mother told me.

MASSON: How was the baby injured?

FONTANILLE: Again, I don't know. I do not know.

MASSON: Did you and Kerry enter any type of agreement to harm your wives?

FONTANILLE: No sir, absolutely not.

MASSON: Have you ever heard Kerry threaten his wife?

FONTANILLE: No sir, I didn't, no.

MASSON: Has she ever, Janet, has she ever spoke to you about Kerry abusing her?

FONTANILLE: Before they were married, over the last few years to be quite honest I haven't been that close with Kerry Myers. I mean we played softball together and that's been about the extension of our relationship. Before

they were married he abused her. I'm pretty sure he hit her several times. I know he did damage, physical damage to a trailer they were living in when they were in college. And I know he put her out on the highway one time, dropped her off on the Interstate.

MASSON: How did she get home that time?

FONTANILLE: We were coming back from a softball game and a friend was following a car behind Kerry's and stopped and picked her up.

MASSON: How long ago were you and your wife seperated?

FONTANILLE: July of 83.

MASSON: When you were seperated what happened to your house?

FONTANILLE: I was very upset and I caused quite a bit of physical damage to the house. I hit some walls and tore up some furniture.

MASSON: What did you do with your wife's clothing?

FONTANILLE: I put them out for the trash man to pick up, sir.

MASSON: Did the police ever come to your house?

FONTANILLE: No sir, no sir.

MASSON: Do you have any utilities connected to your house?

FONTANILLE: At this time no.

MASSON: Who pays the house note on your house?

FONTANILLE: Right now my wife is.

MASSON: Where does she work?

FONTANILLE: She works for Texaco.

MASSON: What's her occupation?

FONTANILLE: I think she's in the, she works as a word procesor. The last I spoke with her she said that's what she's doing.

MASSON: Have you ever attempted suicide?

FONTANILLE: Once I took some pills.

MASSON: What kind of pills?

FONTANILLE: Sleeping pills. I was in a very depressed mood. It was three days after my wife had left and that's the only time, I had spoken of attempting suicide to my wife but it was just to get her to just to shake her up a little bit.

MASSON: Did you ever take your son Matthew from your wife?

FONTANILLE: Once, the day before his birthday. He was at my mother's house.

MASSON: What date was that?

FONTANILLE: December 22nd. And I went over to see him and I didn't bring him back when I should have. I kept him I guess around twelve hours longer than I should have before I brought him back.

MASSON: Why did you bring him back?

FONTANILLE: Well, it wasn't right for me to take him to begin with

and I knew that. And I, there's really no place I could go. I wasn't going to leave, I wasn't going to leave and go any place with him. The only thing I could have done was bring him back. I just wanted to spend some more time with him. I was feeling that he didn't know who I was. So I wanted to at least see him on his birhtday. The next day was his birthday so, that's the whole story.

MASSON: How many injuries do you have?

FONTANILLE: I have one wound below my heart, one wound to the left of my heart, three in my back and I have two fingers that are stitched up.

MASSON: How long were you confined to the hospital?

FONTANILLE: All totalled about twenty hours I was at the hospital, Jo Ellen Smith and Charity. I'm due back again this morning.

MASSON: Had you been drinking before you went to the Myers house on Thursday?

FONTANILLE: No sir.

MASSON: What about Wednesday?

FONTANILLE: No sir.

MASSON: Was Janet drinking?

FONTANILLE: On Wednesday she was drinking Kalua, Kalua, I think that's what it was. She had a small glass of

Kalua.

MASSON: Was she intoxicated?

FONTANILLE: No sir.

MASSON: On any of the days that you saw Kerry had he been drinking?

FONTANILLE: Not that I could tell, no sir.

MASSON: Do you know how Janet was killed?

FONTANILLE: No sir, I don't.

MASSON: Do you know who killed her?

FONTANILLE: I know it wasn't me and I know Kerry Myers was in the house when I got there. I can only assume he did it.

MASSON: Did Kerry ever make any accusations about your having an affair with his wife?

FONTANILLE: No sir, he didn't say one word other than he did what he had to do.

MASSON: Is there anything you wish to add to this statement at this time?

FONTANILLE: Other than the fact I did not do it. I had no reason. There was no motive. And despite what any evidence. I don't even know what kind of evidence could be pointing my way. The truth is the truth. And I just told the truth, sir. It's got to hold up because I didn't do it.

MASSON: Were you forced to give this statement?

FONTANILLE: No sir.

MASSON: Were you threatened in any way or coerced in any way into giving this statement?

FONTANILLE: No sir., no.

MASSON: This statement is completed at approximately 3:20 AM on the same date.

B/1/695/84

MASSON: The following statement is taken from Kerry Myers, white male, date of birth 9/10/56, currently resides at 796 Deerfield, Gretna, La., telephone number 393-8609. Statement is being taken by Sergeant Robert Masson, Jefferson Parish Sheriff's Office Homicide Unit. Statement begins at approximately 1:55 PM on Wednesday, March 14, 1984. Statement is being taken at the Jefferson Parish Sheriff's Office Detective Bureau. Also present during the interview is Mr. Jack Rau, attorney representing Mr. Myers. Mr. Myers, what is your previous address?

MYERS: 2232 Litchwood Lane, Harvey.

MASSON: And how long did you live there?

MYERS: Two and a half years.

MASSON: Are you married?

MYERS: Yes.

MASSON: What is your wife's name?

MYERS: Janet.

MASSON: Do you have any children?

MYERS: Two.

MASSON: What are their names and ages?

MYERS: Sarah, who is ten weeks now, and Ryan, who is 2 1/2.

MASSON: Do you know a subject by the name of William Fontanille?

MYERS: Yes.

MASSON: How long have you known William?

MYERS: About 12 years.

MASSON: Are you presently employed?

MYERS: Yes.

MASSON: Where are you employed?

MYERS: Airdreco Inc.

MASSON: How much education do you have?

MYERS: Four years of college.

MASSON: What college?

MYERS: Two at L.S.U. in Baton Rouge and two at Nicholls State University. I majored in Communications.

MASSON: How long were you married?

MYERS: It will be five, would have been five years this June.

MASSON: What is the name and address of your nearest relative?

MYERS: Clifford Myers, 796 Deerfield Rd., Gretna.

MASSON: Do you remember where you met Bill Fontanille?

MYERS: High school.

MASSON: Which high school was that?

MYERS: Archbishop Shaw.

MASSON: Were you very close friends with Bill Fontanille?

MYERS: Not in high school.

MASSON: When did you start becoming close friends with Bill?

MYERS: It was after I graduated from high school and we started

playing softball with a group of, group of friends who, I guess you could call it a close group of friends. I don't think anybody individually or maybe there was a few people individually closer than others. I would have to say if anybody was the least close to anybody it was, you know, Billy was the person that everybody was least close to. But it was a close knit group of friends.

MASSON: What other people are in that close group of friends?

MYERS: Mike Price, Curtis Jordan, Glen Shirts.

MASSON: When's the last time you saw Bill Fontanille?

MYERS: The Thursday night that he attacked me.

MASSON: Do you remember the date?

MYERS: I think it was February 23rd.

MASSON: Had you seen Bill the day before?

MYERS: Yes.

MASSON: What time did you see Bill on the day before?

MYERS: I saw him that day. I saw him late in the afternoon, about 4:30 and I saw him that night cause we went to play basketball.

MASSON: The first time you saw Bill, was he at your house when you arrived home?

MYERS: Yes he was.

MASSON: Was there anyone else at your house?

MYERS: My wife and my children.

MASSON: On that Wednesday when you saw Bill, did he have a base-

ball bat with him?

MYERS: Yes.

MASSON: Can you describe the bat?

MYERS: It was a green Eastern bat, baseball bat, green and silver I believe it was with a black rubber handle and a black plastic cap on the top. He played baseball with it many times.

MASSON: How long did you stay at the house the first time?

MYERS: Twenty minutes to a half hour.

MASSON: Was Bill there when you got back?

MYERS: No.

MASSON: Did you see Bill's car?

MYERS: No.

MASSON: What kind of car does he have?

MYERS: A Toyota Corrolla Hatchback, brown.

MASSON: Did he tell you how he got to your house?

MYERS: He said his sister dropped him off, said her car was being serviced and she was using his car.

MASSON: What is his sister's name?

MYERS: Cheryl Fontanille, I believe, been a long time since I've seen her.

MASSON: Prior to Wednesday, when was the last time you saw Bill?

MYERS: Tuesday night he came over to my house. He showed up about 6:00 Tuesday night, rang my doorbell. That was the first time I had seen him since November of 83.

MASSON: You were home at that time?

MYERS: Yes I was.

MASSON: Did you see his car at that time?

MYERS: Yes I did.

MASSON: Where did he park his car?

MYERS: In front of the house.

MASSON: Did he have the baseball bat with him at that time?

MYERS: Yes he did.

MASSON: Did he tell you why he had the bat with him?

MYERS: He said he hurt his back and he was using it for a walking cane.

MASSON: Alright, going back to Wednesday, when Bill came back to the house that night, how did he get to the house?

MYERS: He drove his car to my house.

MASSON: Where did he park his car?

MYERS: In front of my house.

MASSON: Did he have the bat with him at that time?

MYERS: He did not come in the house with the bat. He was dressed to play basketball in shorts and tennis, did not have the bat with him.

MASSON: Did he come into your house?

MYERS: Yes he did.

MASSON: How long was he at your house before he left to play basketball?

MYERS: Ten minutes.

MASSON: How'd you go play basketball?

MYERS: Mike Price and Jimmy Jordan came and picked us up in Mike's truck.

MASSON: When was the next time that you saw Bill after Wednesday night?

MYERS: After Wednesday night, when I walked into my house Thursday afternoon and he attacked me.

MASSON: Okay, why don't you describe what happened when you got home Thursday. About what time did you get home?

MYERS: I got home approximately 3:30, 3:45.

MASSON: Did you see Bill's car?

MYERS: No.

MASSON: What happened when you got into the house?

MYERS: As I walked into the house, I unlocked the door. The door was locked. I unlocked the door and walked in, more or less not paying attention to anything. I had reached around to turn and close the door behind me and take my keys out of the door. And as I did I took a step in. As I did that, took a step in, I heard my name being screamed and Bill jumped out of the living room area with a baseball bat, swinging it at me.

MASSON: What happened from that point?

MYERS: He took a couple of swings. I raised my arms up to try, try to block the swings and deflected at least one or both of them

partially cause the swings were at my head. And one of them, both of them I believe hit my arms and deflected into my shoulder or possibly into my head. And broke my left arm on one of the first initial swings. As that happened, the first thing I did was stumble into the open area of the den, stumble back into the den where he continued to come at me with the bat and take a couple of swings. I don't know if he, he actually got any clean hits again with the bat at that time cause I kept trying to get close enough to grab the bat and may have inhibited a complete swing. But he probably did catch me on the arms or on, you know, somewhere about, it was a deflection for at least one, once or twice more until I got, actually got a hand on the bat and held him from rearing back and swinging at me again. And as that happened he wrapped one of the arms around my neck and started grabbing things off the counters, a candle lamp, and a coffee mug and a glass candle holder or vase, candle vase. I don't know. And my table lamp, and everything he, seemed like he could reach his hands on and try to smash it over my head, and as he continued to squeeze me around the neck. And I was screaming at him, "What are you doing? What are you trying to do?" And he kept saying, "Everybody's trying to get me. You out to get me. Everybody wants to have me put away," you know, "You're just like everybody else. You want to get

me." And I started screaming at him, "I don't want to, I don't want to hurt you. I don't want to do anything but I'm gonna bleed to death. You gotta stop. You're gonna kill me." And I was screaming at him, pleading with him to, to stop trying to hurt me. And eventually he stopped, he held on to me but eventually he stopped trying to, to, to injure me and he just held on to me, maybe 15, 20 minutes. And I kept asking if my family was alright because I knew my wife and my children were home. I was hearing some moans coming from the living room. And I kept asking if my wife was okay. And he kept saying she was fine, he had her tied up, that he didn't hurt her. And I asked him about my kids. And he said they were fine and they were both in the rooms, and my little girl was in her room sleeping and my little boy was in in the room and he closed the door and told him not to come out, and he probably, he said he probably fell asleep, you know, that he was frightened and he probably fell asleep. And he got, he became very irritated and agitated and seemed maybe confused to a bit. And he kept saying, "I've got to think. I've got to calm down. I gotta think. I gotta think of what to do." And I kept saying, "Let me go check on my family, let me, you know, leave, let me call an ambulance or you call an ambulance or something." And he kept saying, "No, I can't leave until it gets dark cause I can't go outside like this." And then

finally he let me, you know, he laid me down on the floor sitting up against the arm of the sofa. And he sat in a, in a chair right next to me with the bat in his hands. threatening me not to get up or to try anything, that he had to think what to do next, and he didn't know what to do next, and he had to calm himself down and think. He sat there until it got dark basically in the chair, just looked like a time bomb, you know, just the way he kept mumbling to himself and trying to think. Occasionally I'd ask him if my family was okay and to call an ambulance, let us get some help and to leave so we can get some help. Every time I'd ask him he'd become very agitated. And when it got dark I asked him again, I said, "You said you would leave when it got dark." And he said he couldn't leave yet, he couldn't leave yet, he had to think, he wasn't sure. And then he, as it got dark he said he wanted to watch a particular program and he, Magnum P. I. And there was a remote control unit on the chair and he changed the channel. The program wasn't quite on yet but came on shortly. And it was dark. And the only light on in the house was the tv which was on the whole time. And he sat in that chair, again warned me not to to move. I was bleeding from my head. My arm, at that point I knew my arm was broken and I was, I was dazed, if, if I could call it anything. My head was kind of fuzzy. And I, I thought of trying to do something

to, to get out of the situation but I, at the time I, the only thing I could think of is if I did try to do something and I did it wrong that he would kill me and if my family was alright he might kill them too. At that time if I did the wrong thing he might, you know, go and kill everybody in the house if they were alright that, you know, I, I knew I couldn't do anything. And he watched that program and he changed the channel and he watched two more half hour programs. And he said he would leave after that. And again when that time came up he didn't leave. And another program, some celebrity roast came on and he, at about every, at almost every commercial he was going to get up. I begged him to, to call an ambulance and get us some help and get out of there. I kept telling him that I wouldn't, you know, if I was, I kept telling him"If I'm the only one hurt and you didn't hurt my family, I won't press any charges. The only thing I, if they ask me what happened I'll tell them, you know, I won't I won't press any charges, just get you some help." I kept telling him that it seemed like he needed help. And he kept telling, crying to a degree as he was sitting in the chair about how he'd lost his family and he couldn't see his son, and he didn't have anything anymore. And I kept asking him finally about halfway through that show or three quarters through that show said he was going to get up and call an ambulance, which I thought he did. He

went into the kitchen, he got on the phone and I thought he was calling an ambulance. He said that it would take about thirty to forty-five minutes. And I kept telling him to, you know, leave before they get here cause if they find me they going to call the police. And he kept saying maybe he wanted them to find him, maybe they should find him. He didn't know what he should do or he, at that time he didn't have any place to go yet. It was too early. And a half hour passed, forty-five minutes passed, an hour passed and no ambulance ever showed up. And I kept asking him, you know, where the ambulance was. And he kept saying well, he, he,he was going to leave, he was going to leave. So finally maybe an hour and a half or so after he said he called the ambulance and he the show was over already, that he was going to get up and he was going to leave. It was in the neighborhood of 10:00.

MASSON: When he was sitting in the chair, where was the baseball bat?

MYERS: In his hand. And he said he was going to leave. And he said he wanted to go to the bathroom before he left and that I was to go with him so I wouldn't try anything because he was afraid that I might try to do something to stop him. And as I got up he made me walk in front of him. He grabbed me by the shoulder, which made me jump suddenly the way he grabbed me, cause he grabbed me suddenly and I turned and he, as I turned he tried to stab me with a knife in the back.

And we started struggling again. And I stumbled back into a wall, into the hall against a wall and he came at me. And he tried stab me with the knife again and that's where I believe he partially injured me by puncturing in my pubic area. And I grabbed his arm, and we stumbled in the hall and we both fell down on the floor, which he fell down on top of me. And I grabbed the knife with both of my hands on the blade. He had the handle. And I had it by the blade. I was squeezing it but I also, I had also as we fell down I had fell on top of the knife with my body covering it. With that and plus me holding onto it he couldn't pull the knife out and he, he, we struggled for awhile like that as he kept trying to pull the knife away from me. And I kept screaming at him. He was trying to kill me again and I wasn't letting go of the knife. And finally he, I don't know if he got tired or whatever, he just kept saying, "I won't pull if you won't pull but, you know, again I gotta calm down and I gotta think, and I gotta think of a plan. I gotta", and that's when he started letting me know what he had in mind. That he wanted to go get his son, and that he had to go get his son no matter what. And he kept saying tomorrow was probably going to be his last day anyway, and so he was gonna do whatever it took to get his son, no matter what it took, and that he wanted my shotgun. And he wanted me to show him how to use it, and he wanted

to know if I had and shells in the house. And I kept telling him no that I don't, you know, that I don't keep it loaded, the gun is not loaded, I don't keep a loaded gun, and that I don't have any, I haven't been hunting in a few years, I don't have any shells in the house. And he, this went on for like for some time, maybe an hour or two. And he started, you know, to calm him down I kept trying to, he kept saying he had to do what he had to do, he had to do what he had to do but it was too early, that he had to wait, he had to get there but right before his wife walked out to go to work so he could get into the house and, and get her and get his kid. And that he couldn't let me leave because now he knew if he let me go that I would stop him, that I would, I would have the police on him or I would stop him, I would have them get him is what he said. Said, "You'd have them get me before I could get down the street if I let you go now. So I can't let you go." And I kept thinking he's not going to walk out of here without killing me at all. So I kept trying to appease him and think of something that he could do as an alternate cause he kept saying, "I gotta think, I gotta come up with a plan", you know. And I started suggesting maybe he can lock me some where in the house but that none of the doors, you know, were lockable that he could keep me in. And I suggested he lock me in the trunk of my car. And he, he thought about that

for awhile and he, then he said no that wasn't good, wouldn't be good because if somebody heard you screaming in the trunk that they might, you know, before he got there, if they got up early that they may hear me and I'd still be able to stop him. Then I told him to lock me in the trunk and stick my car in the garage where nobody could hear me. And he, again he wasn't sure about that. And then finally he said that he would take my car, stick me in the trunk and take my car, cause that way it would be even better because then nobody would know whose car it was when he pulled up in front of his wife's house where she was living with her parents. And that would be the best thing. And my son, who was in the room. We were laying in the hall right next to the bedroom door, and my son who was in that room occasionally would stir, stir. He'd moan or stir or you could hear him move on the carpet or his foot would tap the door. When this happened he became very aware of it initially and, you know, kept saying, he got a little paranoid and kept saying, "I hope he don't come out. I hope he don't come out. I can't let him come out. He can't see this, I can't let him come out."And eventually he paid less attention to me. He got off of me, as he was on top of me, and I was laying flat. And he was still leaning over me but, and he was still holding onto the handle of the knife at this time but he kept leaning towards the door

making sure he could grab the door handle in case he thought my son would get up and try to come out of the room. And I didn't want my son at that time coming out either. I certainly didn't want him to come out into that so I even yelled, "Ryan, stay in the room. Don't come out, lay back down and don't come out." At that time I never thought my son was hurt or anything. I just thought he might have been sleeping through it all.

MASSON: How long did this, this encounter with Bill take place?

MYERS: What?

MASSON: How long did it last, this second encounter in the hall?

MYERS: Maybe two to three hours that I, you know, two to three hours at least. He seemed to be able to tell time from the tv. And the only time I remember that he heard something on the tv and he said, "Oh, it must be about 11:00." And it seemed like it wasn't too long because he was thinking about how long he would have to wait before he left the house to go over to his wife's house. And the nearest thing I can think from there, the time as it elapsed was two, possibly three hours.

MASSON: When were you able to wrestle the knife away from Bill?

MYERS: I didn't actually wrestle the knife away. As he became more and more aware of my son's activities, seemed to become more and more increased and he became more and more paranoid about it. And the more paranoid he became about it,

it seemed to me then I started to realize that possibly maybe my son shouldn't be moving, that he may have done something to my son. Because he seemed surprised to some degree and very paranoid about it that he was moving. And as I said he was still holding onto the knife but the more frequent it occurred that my son stirred or bumped his foot into the door he eventually let the knife go, the handle of the knife go. But I was still laying on it, holding onto the blade laying on top of it with my hands underneath me. And I guess if it wouldn't have been for my son I would have never been able to do anything. But every time he bumped the door, he became so paranoid it's almost like he started paying less attention to what I was doing because I was laying there and would have had to do some, some real incredible move to have gotten up at that point to hurt him. Cause it would have taken me some time to get up from my prone position.

MASSON: What happened when you got the knife away from him?

MYERS: Well, as he let it go it was laying underneath me and then gradually every, I kept trying to move and I kept trying to, I kept saying, "I'm uncomfortable", you know, I was laying on my arm and my arm was broken back here. I kept trying to move and as I moved I kept watching how he responded to where I moved. And I'd move and then I'd shift the knife further over where I could get one of my hands on the handle

of the knife. The handle was facing my left side, toward my left hand. And I gradually worked the handle from the blade into, in my hand. And then I rolled over a little bit to one side and tried to lean up against the wall. And every time he'd look at me I'd say, "I'm just trying to get comfortable. I'm just trying to get comfortable." But I was still laying. Well, finally I got myself up on one elbow and it didn't seem to really concern him. But the knife was still underneath me. I kept it more or less concealed the fact that I had the knife in my hand, the handle in my hand. And my son just, you know, seemed like every 30, 40 seconds by now he, he would stir or moan or bump into, his foot kept tapping the door. And he kept, every now and then he'd bend down and try to look under the crack of the door, look under the crack of the door, hold the handle of the door with one hand, and finally I felt I was in a position the next time he bent down I, I would try to do something and he did. And I attacked him with the knife.

MASSON: How many times did you stab him?

MYERS: Actually, I, I don't know. I know I stabbed him at, twice before he turned around. And I lunged at him again and I don't know, my arm was numb. I know the first time I just lunged, went at him as hard as I could. So it had to, it had to stab him.

MASSON: The first time you stabbed him was it in the front or in the

back?

MYERS: It was in the back. It was in the lower, the way he was. proximity towards me it was in his lower left side of the back.

MASSON: You were holding the knife in which hand?

MYERS: In my left hand. I am, my arm was broken but I, I'm left handed. And I just squeezed it as hard as I could. That seemed the natural reaction. I couldn't feel anything. It was numb by then.

MASSON: Do you know what motion you used? Did you use an over hand motion or a side motion?

MYERS: It was an overhand motion. And then I lunged at him twice, and he turned around and I lunged at him again. And I don't know after he turned around. Cause he started, he turned around and he started to struggle to get up.

(BEEP TONE ON TAPE)(END OF SIDE ONE)(BEGINNING OF SIDE TWO)

Okay, he turned around and started to struggle to get up and I went at him again, at least once or twice more. Again, I was, once I did it I think I was just, I don't know how to describe it, enraged, my adrenalin was flowing or something. I just had to get him out of my house.

MASSON: Did you tell him anything?

MYERS: I was screaming at him, "Get out of my house, get out of my

house."

MASSON: During this whole time was the front door open or closed?

MYERS: It was closed.

MASSON: When did you first see blood on Bill?

MYERS: When we were struggling the first time at the bat. I was bleeding and I, my blood was just dripping everywhere. And that was the first time that I really noticed there was blood on him. Everything happened so fast in the beginning. I, I all I could see mostly was the bat coming at me. And after that he had, had me around the neck and kept smashing things over my head. And I, everything got kind of glassy.

MASSON: Which room were you in when you saw the blood the first time?

MYERS: The den.

MASSON: When did you first see the blood on the bat?

MYERS: In the den about the same time as I grabbed the bat with my hand.

MASSON: Did you see any injuries on Bill?

MYERS: No, not at all.

MASSON: When did Bill first put the bat down?

MYERS: He never put the bat down that I know of until he tried to stab me. The first time that night that I knew he did not have the bat.

MASSON: Where'd he put the bat?

MYERS: I don't know, he had it when I got up and he said he was going to the bathroom. And then he tried to stab me, and then all I saw was the knife and I didn't know where the bat, he must have just left the bat where he was. I, I, he had it when I got up.

MASSON: Okay, you mention that you were hit with a vase and a candle holder. Do you remember what color they were?

MYERS: The candle lamp was, was an off white or ivory color. The, I guess the candle holder was amber. The coffee mug was gray or brown, grayish brown.

MASSON: Did any of the fight take place in the kitchen?

MYERS: No.

MASSON: On Wednesday night, did you and your friends discuss Bill's condition?

MYERS: I didn't, no. Because we were there all the time playing basketball. And when we left the gym, Mike, and, Mike, Jim, Billie and I, Mike dropped me off at my house. I went inside. Bill got in his car and left. Mike left. I don't remember really discussing, nothing in depth, maybe a comment was made while we were playing ball or something but no big in depth discussion over his condition.

MASSON: Was his separation discussed?

MYERS: I can't, I can't honestly say if it was brought up or not. Again, it was no, I was never involved in any real discussions about

his condition or his life or whatever.

MASSON: Okay, after the basketball game when you got back to your house, did Bill come into your house?

MYERS: No.

MASSON: He came in earlier that night, did he have the baseball bat with him?

MYERS: Earlier that afternoon he had the baseball bat.

MASSON: Okay, but that night when he came back to play basketball did he have the bat with him?

MYERS: No. He walked in the house dressed to play basketball.

MASSON: How long did you hear the moans coming from the den? Rather from the living room?

MYERS: An hour and a half, two hours.

MASSON: Do you remember where Bill sat?

MYERS: Sat in the rocker/recliner chair right in front of me.

MASSON: What color is the chair?

MYERS: Brown.

MASSON: Where were you sitting?

MYERS: I was on the floor up against the arm of the sofa.

MASSON: Is that the three seat sofa or the love seat?

MYERS: Three seat sofa.

MASSON: Did you see any blood in the hall on the carpet or on the walls in the hall?

MYERS: No, once it got dark I couldn't see anything but as I walked in

the house all I saw was him coming at me with the bat.

MASSON: Do you remember what lights were on in the house when you got home?

MYERS: None, the only thing that was on was the tv.

MASSON: Do you remember if the front porch light was on?

MYERS: No I don't. Sometimes it, it was not uncommon, excuse me, that, it was on when I came home that night because I was, I was out the Wednesday. And it's not uncommon that my wife or I had forgotten to turn it off. And it might have stayed on all day long.

MASSON: Do you remember if any of the curtains were open in the house?

MYERS: No. Not that I remember, no, none of the curtains were open.

MASSON: Do you remember how Bill was dressed?

MYERS: He had jeans on, tennis shoes, a blue button collar I guess you would call it blue oxford cloth type shirt, and a blue Izod sweater, pullover sweater.

MASSON: What kind of Jeans were they? Were they faded old blue jeans or were they new blue jeans?

MYERS: They didn't look real new.

MASSON: Did you notice if he had a belt on?

MYERS: No I didn't.

MASSON: Was he wearing a hat?

MYERS: No, not that I know. He wasn't wearing a hat when he came at

me.

MASSON: On the days before when he came over to the house, either Tuesday or Wednesday, was he wearing a baseball hat or any kind of hat?

MYERS: I honestly can't remember. I, I don't think he was wearing a hat the Tuesday night he first showed up but after that I honestly don't know if he was wearing a hat or not.

MASSON: What time do you leave for work in the morning?

MYERS: It varies, sometimes, depending on how early I might have had an appointment I could leave at 7:30. I might have left my house at 9:00 if I was going right over to the Harvey Canal.

MASSON: Do you remember what time you left Thursday morning?

MYERS: It was 8:45, 9:00.

MASSON: Was Janet up?

MYERS: Yeah, she was sitting in the rocker/recliner feeding Sarah.

MASSON: Is that when you last saw her?

MYERS: That's when I last saw her.

MASSON: Do you remember how she was dressed?

MYERS: Not really, I think she had shorts and leotards on and a pullover shirt. She had gotten up before me as I, while I was taking my shower and all to feed the baby and she was still sitting in the chair. And when I went to kiss her goodbye she, she said she was going to do some exercises, that she was

supposed to go to dancing that night. And I know she had shorts. I think she had her leotards on.

MASSON: How were you dressed?

MYERS: I was dressed in a coat and tie.

MASSON: What color?

MYERS: Had a blue sports coat, blazer, gray shirt and gray and blue striped tie, and gray pants.

MASSON: Did you take the tie off at any time while you were in the house?

MYERS: Yes.

MASSON: What room did you take the tie off in?

MYERS: In the den, while I was leaning up against the sofa, you know, the tie was bothering me and I took the tie off.

MASSON: Did you talk to Janet on the phone during the day?

MYERS: No.

MASSON: Did you stop by the house at any time during the day?

MYERS: Yes, when I walked in and he attacked me.

MASSON: No, I mean prior to that?

MYERS: No.

MASSON: At any time while you were fighting, while the fight was going on or there was a lull in the fighting did you hear either Ryan or Sarah crying?

MYERS: Sarah cried almost constantly on and off. I, it was she'd cry and then you wouldn't hear her for five or ten minutes, then

she'd cry. I never heard Ryan at all.

MASSON: When you were fighting in the hall, did you notice what doors were open and closed?

MYERS: I think Ryan's room was open but my bedroom and Sarah's bedroom door was closed.

MASSON: What about the bathroom?

MYERS: Think the bathroom door was open. I, I really can't be sure of that but I think it was open.

MASSON: Can you describe the knife?

MYERS: It was a butcher knife with a brown wooden handle that we had in our kitchen. I've seen the knife many times. My wife used it to prepare meals.

MASSON: Okay, what did you do with the knife after Bill was stabbed?

MYERS: I ran back in the house after he got out of the house, and I kept the knife in my hand while I was on the phone. And then I remembered that he said he had put a shell in my gun but he didn't know what kind of shell it was. Whether it was, or whether it was even in there right. So, I told whoever the officer or the dispatcher I was on the phone with hold on a minute and I went to pick up the gun. I opened the chamber and looked at the shell. And it looked like a 12 guage shell. Closed it back and I left, and I set the knife down on a counter if I'm not mistaken and held the gun in case he came back.

MASSON: Did you put any type of clothing or any kind of towels or anything in the kitchen sink?

MYERS: Did I, no.

MASSON: Do you know if Bill did?

MYERS: I know he got a towel when he went into the kitchen, and wet it and wiped his, I believe his, maybe some of the blood off of him and let me wipe some of the blood from around my mouth. Cause my mouth and my nose, my whole face was caked with blood.

MASSON: Do you remember where you stabbed Bill specifically?

MYERS: Only specifically I know the first time I stabbed him was in the lower left portion of his back. That is, I mean that is, I'm absolutely positive that was where I first stabbed him. And I stabbed him again in the back. I'm not really sure where it went.

MASSON: Whose shotgun was it?

MYERS Mine.

MASSON: Where is the shotgun normally kept?

MYERS: On a gunrack in the den.

MASSON: Is it normally kept loaded?

MYERS: No, absolutely, I've never kept a loaded gun and especially with two kids in my house.

MASSON: Did you have any ammunition in your house for the gun?

MYERS: I did. I had three shells that I always kept. I didn't. I hadn't

been hunting in a couple of years so I had no boxes of shells but I always kept three shells in one of the desk drawers. But I hadn't seen them in so long, I'd probably had to look for them myself to find them.

MASSON: Did you clean any blood off of yourself?

MYERS: Only part that I wiped, my face, that, once, with that towel, just wiped my face around my mouth area because the blood was coagulating and it dripped into, some of it had dripped into my eyes.

MASSON: Did Janet wear any of your clothing at any time?

MYERS: Yes.

MASSON: Were there any specific articles that she would wear?

MYERS: She'd wear my T-shirts to sleep in. She'd wear my jerseys sometime, some of my old baseball or football jerseys. Occasionally she'd even wear my athletic socks.

MASSON: Are you right handed or left handed?

MYERS: Left handed.

MASSON: Do you do all things left handed?

MYERS: All the things, the only thing I really do right handed is play golf, only because I've never learned how to play left handed. Cause when I started learning I couldn't find left handed clubs.

MASSON: When you came into the house Thursday, did you close the door behind you?

MYERS: Yes.

MASSON: Did you lock it?

MYERS: No, I didn't get a chance.

MASSON: Was the door locked when you got home?

MYERS: Yes.

MASSON: Were the curtains in the den open or closed?

MYERS: Closed, I can remember, they possibly could have been partially open but it wasn't, you know, where I could look right out through them.

MASSON: Did you notice any damage to the walls in the hall?

MYERS: No.

MASSON: Was there any damage to the walls before Thursday?

MYERS: No.

MASSON: Okay, when you found Janet, did you touch her at all?

MYERS: I, I bent down over her and reached out and touched her on the hand just to see if she might stir or something.

MASSON: Did Janet normally wear underwear?

MYERS: Yes.

MASSON: Around the house?

MYERS; She always wore panties. Sometimes she, around the house she did not wear a bra. She wouldn't even sleep without panties on.

MASSON: Do you know a man by the name of Chuck Kussard?

MYERS: Chuck Kussard, yes.

MASSON: Where do you know Chuck from?

MYERS: I roomed with Chuck in college. Chuck also used to play ball with us in the beginning but had, he had gotten married and moved to Hammond where he was going to school. In the last few years, you know, we hadn't seen a whole lot of Chuck.

MASSON: When you were with Chuck one time, did you have an argument with Janet where you broke a glass?

MYERS: Where I broke a glass?

MASSON: Or a glass was broken?

MYERS: Yes, we were in college when we were first dating. We lived in a trailer, Chuck and I lived in a trailer. We had an argument and went down the steps out of the trailer, and she picked up, she was mad at me and she picked up a rock an she was going to throw it at the trailer but it, we had a storm door and instead of hitting the trailer it hit the storm door and shattered the glass.

MASSON: Do you know Curtis and Debbie Jordan?

MYERS: Very well.

MASSON: Were you at a Halloween party at their house in Terrytown?

MYERS: Yes.

MASSON: When you had an argument with Janet?

MYERS: Yes.

MASSON: What was the argument about?

MYERS: I, I think she was just kind of aggravated at me because I wasn't, I wasn't feeling real well that night and I was just, I guess I wasn't in the most lively party mood and she, she was. And she just wanted me to be a little more in the party mood and dance a little more, and she was kind of aggravating me, aggravated because I was just sitting down talking instead of

MASSON: Did you leave the party?

MYERS: We walked outside. I had walked outside for awhile. She came outside a little bit after.

MASSON: Did she come get you or did somebody else come get you?

MYERS: No, she, she came outside just to see where I was.

MASSON: Did you argue over her flirting with somebody at the party?

MYERS: No, no, I did not argue. My wife was, I mean my wife liked to dance and if somebody asked her to dance, either Jimmie or Curtis or Mike or whoever would have asked her to dance, she'd have got up and danced. And the same thing with Curtis' wife or whoever. That never bothered me. My wife was not a flirt. All those people, you know, were friends and I trusted my wife.

MASSON: When you returned from the ball game on, you were on the highway one time, did you put your wife out of the car?

(TELEPHONE RING)

MYERS: We weren't married at that time. I got mad at her once.

MASSON: Did you ask her to get out of the car on the highway?

MYERS: Yeah.

MASSON: Do you know how she got home?

MYERS: I picked her back up, I think (TELEPHONE RING) or maybe she got, I'm not really sure if she got in the car with. We were all leaving a game. This was before we even got married. We were still in college. And either she got back in my car or she rode with somebody else who was right behind us, she got in one of their cars. It's been so long ago I don't even remember. I don't even remember what we argued about then. Again, that was, that was a year before we got married at least.

MASSON: Have you ever struck your wife?

MYERS: Yes, once we had an argument a few years ago after we were married. This was, wasn't long after we were married. I don't even know what it was about. It wasn't anything major between us. It was something else that had happened and we disagreed on. All I did was, was, she got I would guess somewhat hysterical. I, something, I'm trying to think. It might have been even something her mother had done to her or, you know, she was mad at. And I just slapped her in the face and grabbed her by the shoulders and told her, you know,

"calm down, you gotta stop and calm down and talk to me." Other than that I've never struck her.

MASSON: Have you had any loud arguments at your house, arguments that the neighbors would know about or would be able to hear?

MYERS: We argued and yelled, possibly, I'm not going to say that nobody ever not heard anything. If the windows might have been open sure they could have heard it. I hear my neighbor. I used to hear my neighbors yelling at their kids and yelling at each other when the windows were open in spring and fall months, I guess, all the time.

MASSON: Have you ever had the police at your house to quell, an argument between you and your wife?

MYERS: When we were first married we lived in an apartment and we had an arurment. And we had a neighbor who used to play his stereo 3:00 and 4:00 in the morning constantly to where it vibrated the walls. And we had, a couple of times had to call the manager and the police on him. And I think he must have heard us one night and called the police on us. We had an argument and it wasn't violent or anything we were just, it got a little loud.

MASSON: Did either you or your wife ever call the police to quell an argument?

MYERS: No, no.

MASSON: Okay, when you called the police did you call the police before or after you checked on the condition of your wife and children?

MYERS: The first thing I did when he got out of the house was pick up the phone and call the police.

MASSON: After you checked on your wife and found her condition, why didn't you go check on your children instead of going back to the phone?

MYERS: Well, I was already on the phone and I wanted to get back and be there and have that gun in my hand for protection. He said my children weren't hurt and I could hear Sarah crying and I knew where Ryan was, and I saw him, I heard him moving, you know, and saw his foot from under the door that he was stirring. And so my first assumption was, you know, he wasn't hurt. And it just never occurred, I was really shook up when I saw my wife. And I just hung there and kept trying to talk to whoever was on the phone and make sure I, I, you know, I could protect myself if he came back. And it seemed just maybe a couple of minutes after I checked on her that the police showed up at the door.

MASSON: Okay, there was a call that came on your phone while you were talking to the police. Did you ever find out who was on the phone or whoever called?

MYERS: I heard a beep, beep in the phone, okay. We have, we had call

waiting and I heard the beep, beep. And I didn't know, I thought it was the call waiting. I didn't know if it may be something at the police station or or, you know, it was from their phones or it was mine. But I never got off the phone to, to, I never, you'd have to touch the button and disconnect one to get to the other, no, I never.

MASSON: Is it uncommon for you to get a calls at that time in the morning?

MYERS: Very.

MASSON: Is there anything else you can think of at this time you want to add to this statement?

MYERS: Only that I don't know what happened or what made him do it. But I do know that once he, he started from the time I walked in. And again I, whatever happened to my wife and to my son happened before I got there. Or possibly may even happened right before I got there. As I think about it, maybe from where he came out at me. But he definitely, I really definitely believed he wasn't going, the way he was, he would not let me go. He, he wasn't going to be stopped before he did whatever he had to do at his wife's house. And he wasn't going to let anything stop him. Maybe that's, maybe that's why he killed my wife, maybe she became frightened and he thought she might even call the police. I don't know.

MASSON: Do you believe that your wife and Bill had engaged in sexual relations?

MYERS: Absolutely not.

MASSON: When was the last time that you had relations with your wife?

MYERS: Wednesday night, after the basketball game.

MASSON: Is there anything else you want to add?

MYERS: No.

RAU: Let me just ask him a couple of things. Would you say again the nature of his voice when you first came in the door?

MYERS: Panic, he screamed my name almost in panic.

RAU: Now, before you got ahold of the knife did he have any injuries at all?

(INAUDIBLE)

MYERS: The only one that he had was a cut on his finger that he had to get from breaking one of the glass objects over my head. Cause he mentioned it a couple of times about his finger was cut pretty bad.

RAU: That's all.

MASSON: Statement was completed at approximately 2:45 PM, same date.